

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF OHIO
3 WESTERN DIVISION

4 UNITED STATES OF AMERICA, - Docket No. 3:10-cr-522
5 Plaintiff, - Toledo, Ohio
6 v. - September 8, 2011
7 ALEX DAVID COOK, - Trial
8 Defendant. -

9
10 VOLUME 4
11 TRANSCRIPT OF TRIAL
12 BEFORE THE HONORABLE JAMES G. CARR
13 UNITED STATES DISTRICT JUDGE, AND A JURY

14 APPEARANCES:

15 For the Plaintiffs: United States Attorneys' Office
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Proceedings recorded by mechanical stenography,
transcript produced by notereading.

1 (Reconvened at 8:41 a.m.)

2 (The jury is not present.)

3 MS. KELLEY: I have two witnesses here ready
00:00:02 4 to go; two more are coming from approximately three
00:00:05 5 hours away, that is to say Mark and Ann Vance; and then
00:00:10 6 my computer forensic expert cannot get here until 11:30.

00:00:21 7 THE COURT: We'll do the best we can.

00:00:23 8 THE COURT: Are the two who are travelling
00:00:26 9 three hours, are they on their way?

00:00:28 10 MS. KELLEY: Yes. Alex's father is calling
00:00:31 11 them right now. I touched base with them last night. I
00:00:35 12 imagine simply because of the weather they've had some
00:00:37 13 bad driving.

00:00:38 14 THE COURT: Okay.

00:02:06 15 (Jury enters the courtroom.)

00:02:48 16 THE COURT: Good morning. You may be
00:02:49 17 seated.

00:02:49 18 Ms. Kelley, you may proceed. Who is your
00:02:52 19 first witness?

00:02:53 20 MS. KELLEY: Our first witness is Jerry
00:02:55 21 Cook, the defendant's father.

00:03:22 22 (The witness was sworn by the clerk.)

00:03:40 23 MS. KELLEY: Your Honor, do you want me to
00:03:41 24 summarize briefly what this witness will say?

00:03:44 25 THE COURT: Please.

00:03:45 1 MS. KELLEY: Mr. Cook will testify that
00:03:47 2 numerous statements in the alleged confession are simply
00:03:50 3 wrong and that other individuals had access to his son's
00:03:54 4 computer and, in fact, he observed that.

00:03:57 5 THE COURT: Okay. Will you please tell the
00:04:01 6 ladies and gentlemen your name.

00:04:02 7 THE WITNESS: Jerry Cook.

00:04:03 8 THE COURT: What community do you live in?

00:04:05 9 THE WITNESS: Fredericktown, Ohio.

00:04:07 10 THE COURT: You're the defendant's father;
00:04:09 11 is that correct?

00:04:09 12 THE WITNESS: Yes, I am.

00:04:12 13 - - -

00:04:12 14 JERRY COOK, DIRECT EXAMINATION

00:04:13 15 BY MS. KELLEY:

00:04:13 16 Q. Good morning, sir.

00:04:14 17 A. Good morning.

00:04:14 18 Q. Please tell the jury what you do for a living.

00:04:17 19 A. I work for a company called North American
00:04:19 20 Communication Resources. I design basically telephone
00:04:22 21 systems for large corporations.

00:04:25 22 Q. How long have you worked for them?

00:04:26 23 A. I've been with them for approximately two years,
00:04:28 24 but I've been in that field for over 26 years.

00:04:31 25 Q. Are you married?

00:04:32 1 A. Yes, I am.

00:04:33 2 Q. How long have you been married?

00:04:34 3 A. Let me get this right. A little over 25 years
00:04:38 4 this last May.

00:04:39 5 Q. And to state the obvious, you know the defendant
00:04:42 6 in this case, Alex Cook, correct?

00:04:44 7 A. Yes, I do.

00:04:44 8 Q. How old is Alex now?

00:04:47 9 A. Alex is 20. He turned 20 in December.

00:04:50 10 Q. Now, how would you describe your relationship
00:04:52 11 with your son?

00:04:54 12 A. I think it's very good. We have a very close
00:04:56 13 relationship. We talk. We have our differences, most
00:05:00 14 fathers do, but a very good relationship.

00:05:03 15 Q. Has he been forthcoming with you about rather
00:05:08 16 personal and intimate facts in his life?

00:05:10 17 A. Yes. We have a lot of time, a lot of camping
00:05:14 18 private time together. We talk and do a lot of things.
00:05:17 19 He's always opened up when he needs anything, have
00:05:20 20 something concerning him, we talk about it, those type
00:05:22 21 of things.

00:05:23 22 Q. You mentioned camping a moment ago. When did you
00:05:26 23 camp with Alex?

00:05:27 24 A. We've been doing that since he was probably about
00:05:30 25 eight years old. I've been involved in Scouts, and he

00:05:33 1 would go with me on camp-outs actually before he became
00:05:37 2 a Boy Scout. Then once he became is a Boy Scout we
00:05:40 3 camped at least once a month around the year, pretty
00:05:44 4 much with him all the time doing that.

00:05:47 5 Q. There is a statement in Government's Exhibit 9,
00:05:52 6 Alex's supposed confession, that he was molested at Boy
00:05:57 7 Scout camp when he was 11. Do you know anything about
00:06:00 8 that alleged incident?

00:06:01 9 A. Alex never talked anything about that to me or
00:06:05 10 anybody else. And in Scouts, if it happened in Scouts,
00:06:08 11 Scouting is very, very particular about those types of
00:06:12 12 things. They have a youth protection clause that every
00:06:15 13 Scout leader, which I was a trained Scout leader, have
00:06:18 14 to go through, and they have to be recertified every
00:06:20 15 year. If that was reported to any Scout leader, they
00:06:23 16 have to report that to the district Scout office for
00:06:27 17 investigation, even if they believe there might have
00:06:29 18 been something they have to report that --

00:06:30 19 Q. But I want to get back to Alex's relationship
00:06:33 20 with you; that is to say, the father-son relationship.

00:06:37 21 A. Yes.

00:06:37 22 Q. Over the years have you felt there was any reason
00:06:39 23 to believe that this happened, that Alex was withholding
00:06:43 24 information from you?

00:06:44 25 A. No.

00:06:45 1 Q. All right. There's also a statement or -- yes, a
00:06:51 2 statement in Alex's alleged confession that he had an
00:06:57 3 ex-fiancée'. To the best of your knowledge, has Alex
00:06:59 4 ever been engaged?

00:07:00 5 A. No, he has not.

00:07:02 6 Q. Steady girlfriend?

00:07:04 7 A. Not really, no. Maybe six weeks at the most;
00:07:08 8 that was about it.

00:07:09 9 Q. Never engaged?

00:07:09 10 A. Never engaged.

00:07:11 11 Q. All right. There's also a statement in the
00:07:13 12 supposed confession --

00:07:15 13 MR. SECOR: Objection to the
00:07:17 14 characterization, Your Honor.

00:07:18 15 THE COURT: Overruled.

00:07:19 16 MS. KELLEY: I'll rephrase.

00:07:21 17 THE COURT: Overruled.

00:07:22 18 BY MS. KELLEY:

00:07:23 19 Q. There's also a statement in the supposed
00:07:24 20 confession --

00:07:25 21 MR. SECOR: Objection, Your Honor.

00:07:27 22 "Supposed confession;" it's a characterization.

00:07:30 23 THE COURT: That's the contention. The jury
00:07:32 24 can decide.

00:07:36 25 BY MS. KELLEY:

00:07:39 1 Q. There's also a statement in the confession that
00:07:42 2 Alex teaches Sunday school. Is this true?

00:07:44 3 A. No, it is not.

00:07:45 4 Q. Could he teach Sunday school without you knowing?

00:07:48 5 A. We've been going to same church for 15 years.
00:07:51 6 And our church, it's a small country church about 75,
00:07:55 7 80, 85 people. And we have maybe 20 youth. We do not
00:08:00 8 allow young people to teach. It's always -- usually the
00:08:04 9 younger kids it's always the women of the church that
00:08:07 10 teach those. They may be assisted by a 20 or 25 year
00:08:11 11 old other teacher, but only women teach the children.
00:08:15 12 Some of the men teach the older classes. Most of the
00:08:18 13 time Alex was never at Sunday school. He would come to
00:08:21 14 church but never come to Sunday school services.

00:08:24 15 Q. Now, did you ever visit Alex in his apartment at
00:08:28 16 1268 Knollwood in Lima?

00:08:30 17 A. Yes, we did.

00:08:31 18 Q. When you say "we," who do you mean?

00:08:33 19 A. My wife and I went up there on several occasions.

00:08:36 20 Q. Okay. And when did Alex move in?

00:08:38 21 A. He moved in the last week of April of 2010.

00:08:46 22 Q. Did you help Alex move in or anything?

00:08:48 23 A. Well, he took his stuff up initially. We went up
00:08:52 24 that first weekend, I believe it was the 1st and 2nd of
00:08:56 25 May of 2010.

00:08:58 1 Q. By "stuff" do you include a computer?

00:09:00 2 A. Yes, he did.

00:09:01 3 Q. All right. And what kind of computer was it?

00:09:04 4 A. It was an HP laptop computer.

00:09:08 5 Q. To the best of your knowledge, how long did he
00:09:10 6 have that computer?

00:09:11 7 A. He was given that as a graduation present when he
00:09:15 8 graduated high school in 2009.

00:09:18 9 Q. And he moved in in 2010?

00:09:20 10 A. May, 2010.

00:09:21 11 Q. So he had had that computer for at least a year?

00:09:24 12 A. Well, not quite.

00:09:25 13 Q. Ten months?

00:09:26 14 A. Yeah. He got it probably the end of June, so
00:09:29 15 yeah, about 11 months.

00:09:30 16 Q. Did Alex have a roommate?

00:09:32 17 A. Yes, he did.

00:09:33 18 Q. And what was the roommate's name?

00:09:35 19 A. Ian Douglas.

00:09:39 20 Q. Approximately how old was Ian?

00:09:41 21 A. I believe Ian was about the same age as Alex.
00:09:45 22 He might have been a few months older or younger. I'm
00:09:48 23 not sure of his birthday, but around the same age.

00:09:50 24 Q. Do you know if Ian had a computer?

00:09:53 25 A. At the time he moved in, he did not. He said he

00:09:56 1 did; he'd be using Alex's for a while, and he would get
00:10:00 2 his later.

00:10:01 3 Q. And how long did he use Alex's computer, if you
00:10:04 4 know?

00:10:04 5 A. I'm not sure.

00:10:05 6 Q. Did you ever observe him using Alex's computer?

00:10:08 7 A. Yes, I did.

00:10:10 8 Q. And you're sure that it was Alex's computer?

00:10:13 9 A. Yes.

00:10:13 10 Q. How do you know it was Alex's computer?

00:10:15 11 A. Well, I saw him, and it kind of went through my
00:10:19 12 mind, I wish he wouldn't share his computer. He was the
00:10:23 13 only one there. But I did see him on it, yes.

00:10:26 14 Q. Did he use any of Alex's other things?

00:10:29 15 A. They shared pretty much everything; coats, you
00:10:33 16 know, everything but ball caps; that was their precious
00:10:35 17 things. Coats, shirts, food. We actually went out that
00:10:37 18 weekend and basically stocked their apartment with food.
00:10:40 19 We were getting food for Ian, food for Alex, stuff they
00:10:43 20 liked.

00:10:43 21 Q. What weekend was that?

00:10:44 22 A. That was the first weekend of May, 1st and 2nd of
00:10:47 23 May.

00:10:48 24 Q. And was that one of the occasions when you saw
00:10:51 25 Ian use Alex's computer?

00:10:52 1 A. Yes, it is.

00:10:53 2 Q. Ever see him use it any other time?

00:10:55 3 A. Not after that, no.

00:10:57 4 Q. All right. Sir, would it be fair to say that you
00:11:01 5 love your son?

00:11:02 6 A. Yes, I do.

00:11:03 7 Q. Would you be willing to lie under oath for him?

00:11:06 8 A. No, I would not.

00:11:07 9 MS. KELLEY: All right. Thank you. No more
00:11:09 10 questions.

00:11:13 11 THE COURT: Mr. Crawford or Mr. Secor?

00:11:17 12 MR. SECOR: No questions.

00:11:22 13 THE COURT: You may step down.

00:11:23 14 Your next witness, and what will we be
00:11:27 15 hearing?

00:11:27 16 MS. KELLEY: Yes, the next one is here.

00:12:01 17 (The witness was sworn by the clerk.)

00:12:12 18 THE COURT: What do you expect this witness
00:12:14 19 to be talking about?

00:12:15 20 MS. KELLEY: Thank you, Your Honor. We
00:12:16 21 expect the pastor to address the issue as to whether or
00:12:21 22 not Alex indeed teaches Sunday school, and also another
00:12:24 23 statement in the confession that Alex has discussed his
00:12:28 24 addiction to child pornography with him.

00:12:33 25 THE COURT: Sir, you have to slide a little

00:12:36 1 bit closer to the microphone.

00:12:42 2 Your name is?

00:12:42 3 THE WITNESS: My name is Gary Kochhaiser.

00:12:46 4 THE COURT: Maybe a little closer.

00:12:49 5 THE WITNESS: My name is Gary Kochhaiser.

00:12:51 6 THE COURT: How to do you spell your name?

00:12:53 7 THE WITNESS: K-o-c-h-h-a-i-s-e-r.

00:13:00 8 THE COURT: What is your community of
00:13:01 9 residence?

00:13:02 10 THE WITNESS: Mansfield, Ohio.

00:13:06 11 THE COURT: What is your occupation?

00:13:07 12 THE WITNESS: I'm the pastor of the
00:13:09 13 Akneytown Grace Baptist Church.

00:13:12 14 THE COURT: Which town?

00:13:14 15 THE WITNESS: It's called Akneytown. Like
00:13:18 16 Akney, Iowa.

00:13:20 17 THE COURT: And how long have you held that
00:13:22 18 position?

00:13:22 19 THE WITNESS: Since January 1, 2011.

00:13:31 20 THE COURT: And how long have you been
00:13:32 21 engaged in the religious occupation?

00:13:34 22 THE WITNESS: Thirty-five years.

00:13:36 23 THE COURT: What sort of education did you
00:13:38 24 have?

00:13:38 25 THE WITNESS: I have a bachelor's, two

00:13:41 1 masters, and my doctorate.

00:13:42 2 THE COURT: In what fields?

00:13:44 3 THE WITNESS: Grace College, Grace
00:13:48 4 Theological Seminary and Anderson Theological University
00:13:54 5 and Trinity Evangelical Divinity School. My college was
00:13:59 6 in psychology and political studies, and both the
00:14:02 7 masters and doctorate is in Biblical ministries and the
00:14:06 8 Old Testament.

00:14:09 9 THE COURT: You may continue.

00:14:12 10 - - -

00:14:12 11 GARY KOCHHAISER, DIRECT EXAMINATION

00:14:13 12 BY MS. KELLEY:

00:14:13 13 Q. Good morning, sir. Do you know the defendant,
00:14:16 14 Alex Cook?

00:14:17 15 A. Yes, I do.

00:14:18 16 Q. Please tell the jury how you know Alex.

00:14:20 17 A. Alex is a member of our church. I have met him;
00:14:24 18 I've seen him in church, know the family; they're a part
00:14:27 19 of our church, been involved in leadership ministry.

00:14:30 20 Q. And over the past couple of years has Alex been a
00:14:37 21 regular church attendee?

00:14:39 22 A. I would say no because of the fact that when I
00:14:43 23 first came to this job, he was on the road a lot with
00:14:47 24 doing -- I can't even remember exactly who it was with.
00:14:50 25 When he was home, he was there. And then when he was

00:14:53 1 at college, again, it was depending upon the week.

00:14:56 2 Q. So to clarify, he graduated from -- he graduated
00:15:01 3 from high school, correct?

00:15:01 4 A. Yes.

00:15:02 5 Q. And then after that he worked on the road for
00:15:04 6 about a year?

00:15:05 7 A. Yes. I can't remember exactly. It was with a
00:15:08 8 company that --

00:15:10 9 Q. That's fine. Then he enrolled in college?

00:15:12 10 A. Yes.

00:15:13 11 Q. And since then his attendance has been sporadic?

00:15:17 12 A. Yes.

00:15:19 13 Q. To the best of your knowledge does he teach
00:15:22 14 Sunday school?

00:15:23 15 A. No, ma'am.

00:15:26 16 Q. Did you ever receive a call from law enforcement
00:15:34 17 in the Fredericktown or Lima area that Alex might be in
00:15:43 18 a dangerous position in regards to young children?

00:15:46 19 A. No, ma'am.

00:15:47 20 Q. Never did?

00:15:48 21 A. No, ma'am.

00:15:52 22 Q. Now, there is a statement in the supposed
00:15:57 23 confession that Alex has spoken to his church leader
00:16:06 24 about various issues including a preoccupation with
00:16:12 25 pornography. First of all, are you typically referred

00:16:16 1 to as a, quote-unquote, a church leader?

00:16:18 2 A. No, ma'am.

00:16:18 3 Q. What are you typically referred to?

00:16:20 4 A. Pastor. Our church is congregational. Other
00:16:24 5 than the pastor, I'm like everybody else in the church.

00:16:27 6 Q. All right. So would it -- would Alex be likely
00:16:32 7 to refer to you as a church leader?

00:16:37 8 MR. SECOR: Objection, Your Honor.

00:16:39 9 THE COURT: I think that's --

00:16:42 10 MS. KELLEY: I'll withdraw it. Thank you.

00:16:45 11 BY MS. KELLEY:

00:16:45 12 Q. Has Alex discussed with you a preoccupation with
00:16:49 13 pornography?

00:16:50 14 A. We talked about it. I wouldn't say we discussed
00:16:55 15 it.

00:16:55 16 Q. All right. Could you please tell the jury the
00:16:58 17 difference between "talk" and "discuss."

00:17:00 18 A. I guess I'm the one that brought it up because
00:17:03 19 most of us as males struggle. Let's be honest. And I
00:17:06 20 brought it up just as a conversation between him and I
00:17:09 21 as a young man and his pastor.

00:17:12 22 Q. Did Alex ever mention to you any preoccupation
00:17:16 23 with child pornography?

00:17:20 24 MR. SECOR: Objection, Your Honor.

00:17:21 25 THE COURT: Basis?

00:17:24 1 MR. SECOR: Hearsay.

00:17:25 2 THE COURT: It's not for the truth of the
00:17:27 3 matter asserted, whether such statement was made; is
00:17:31 4 that correct?

00:17:31 5 MS. KELLEY: You can continue.

00:17:33 6 A. Never child pornography, no, ma'am.

00:17:39 7 (Discussion had off the record.)

00:17:39 8 MS. KELLEY: Nothing further.

00:17:41 9 MR. SECOR: No questions.

00:17:42 10 THE COURT: Pastor, you may step down.

00:17:44 11 You're welcome to stay or go; it's up to you. Thank you
00:17:47 12 for coming.

00:17:50 13 MS. KELLEY: Your Honor, I'll have to check
00:17:53 14 and see if my next two witnesses are here.

00:18:31 15 (Discussion had off the record.)

00:18:31 16 MS. KELLEY: Your Honor, the next two
00:18:33 17 witnesses are approximately five minutes away. For
00:18:37 18 everyone's convenience, if you like, we can put Mr. Cook
00:18:40 19 on the stand next.

00:18:42 20 THE COURT: Why don't we sort of get
00:18:44 21 started, and we can interrupt.

00:18:46 22 MS. KELLEY: I would prefer to go straight
00:18:49 23 through Alex's testimony.

00:18:50 24 THE COURT: Are they here in Toledo? Do you
00:18:53 25 know?

00:18:54 1 MS. KELLEY: Yes. Before Mr. Cook got on
00:18:55 2 the stand, he called them. At that point in time they
00:18:58 3 said they were ten minutes away.

00:19:02 4 THE COURT: Did you wish them good luck at
00:19:06 5 finding a parking spot? Why don't we take a break.

00:19:11 6 Ladies and gentlemen, apparently the next
00:19:13 7 couple witnesses should be here shortly. Once they're
00:19:16 8 here, we'll get back to business.

00:38:36 9 (Recess taken.)

00:38:45 10 THE COURT: Ms. Kelley, who is your next
00:40:04 11 witness, and what are we going to hear?

00:40:06 12 MS. KELLEY: Mark Vance, who has been Alex's
00:40:10 13 Scout leader. And he will testify that he and Alex
00:40:13 14 never had discussions as to the alleged molestation that
00:40:16 15 Alex suffered as a child.

00:40:44 16 (The witness was sworn by the clerk.)

00:41:01 17 THE COURT: The sound of your voice, you may
00:41:06 18 be one witness who doesn't have to be told to get closer
00:41:10 19 to the microphone.

00:41:12 20 Will you tell the ladies and gentlemen your
00:41:13 21 name, please.

00:41:14 22 THE WITNESS: Mark Wayne Vance, R.N.

00:41:18 23 THE COURT: And you said R.N. Is that
00:41:20 24 registered nurse?

00:41:21 25 THE WITNESS: Registered nurse.

00:41:22 1 THE COURT: How long have you been a
00:41:24 2 registered nurse?

00:41:25 3 THE WITNESS: I graduated in '76. 35 years.

00:41:33 4 THE COURT: What is your community of
00:41:34 5 residence?

00:41:35 6 THE WITNESS: Fredericktown, Ohio.

00:41:36 7 THE COURT: Where do you work?

00:41:37 8 THE WITNESS: In Crestland, Ohio at
00:41:40 9 Pittsburgh Glassworks.

00:41:41 10 THE COURT: In a nursing capacity?

00:41:43 11 THE WITNESS: Yes. I work for Med Central
00:41:46 12 Health System in their occupational health department,
00:41:48 13 and they have me stationed at the factory as the plant
00:41:52 14 nurse.

00:41:53 15 THE COURT: Okay. And you're acquainted
00:41:57 16 with Mr. Alex Cook?

00:41:58 17 THE WITNESS: Yes.

00:41:59 18 THE COURT: How long have you known him?

00:42:00 19 THE WITNESS: Probably 14 years when I try
00:42:04 20 to figure it up.

00:42:05 21 THE COURT: You're affiliated with Boy
00:42:07 22 Scouts of America?

00:42:08 23 THE WITNESS: Yes.

00:42:08 24 THE COURT: How long have you been with that
00:42:10 25 affiliation?

00:42:11 1 THE WITNESS: Fifteen years.

00:42:15 2 - - -

00:42:15 3 MARK VANCE, DIRECT EXAMINATION

00:42:15 4 BY MS. KELLEY:

00:42:15 5 Q. Good morning, Mr. Vance.

00:42:17 6 A. Good morning.

00:42:17 7 Q. In what capacity have you known Alex during these
00:42:21 8 14 years?

00:42:23 9 A. I first knew him as the son of our treasurer.

00:42:26 10 Q. Who was that?

00:42:26 11 A. Jerry Cook.

00:42:28 12 Q. All right.

00:42:29 13 A. He's one of the Eagle Scouts of Troop 342. When
00:42:33 14 he moved back home, he came in to help out because our
00:42:37 15 finances were in disarray. And with his organization he
00:42:40 16 was able to bring us back into financial responsibility.

00:42:43 17 Q. Beautiful.

00:42:44 18 A. Alex was the tagalong. He always wanted to come
00:42:47 19 to Boy Scout meetings.

00:42:49 20 Q. So Alex was what, about four or five at that
00:42:51 21 point in time?

00:42:53 22 A. Probably.

00:42:53 23 Q. And were you ever Alex's scoutmaster?

00:42:56 24 A. Assistant scoutmaster.

00:42:58 25 Q. All right.

00:42:59 1 A. I've never been privileged to have the position
00:43:02 2 of scoutmaster.

00:43:03 3 Q. Okay.

00:43:04 4 A. But my wife says I'm a better indian than I am a
00:43:08 5 chief, so I respect her wisdom in that.

00:43:13 6 Q. Now, do you remember the summer when Alex was
00:43:17 7 about 11 years old?

00:43:19 8 A. Yeah.

00:43:21 9 Q. Did he go to Boy Scout camp, if you know?

00:43:24 10 A. I don't think he ever missed Boy Scout camp from
00:43:27 11 when he joined.

00:43:29 12 Q. And were you relatively close to Alex?

00:43:32 13 A. Yes. He was one of the -- one of the scouts that
00:43:37 14 was always looking to do more and be more. And so he
00:43:42 15 wanted to accomplish more. He wanted to move -- in
00:43:46 16 scouting you move up by ranks, and he didn't want to
00:43:51 17 stay in the same rank. He was headed for the top.

00:43:53 18 Q. All right. And did Alex ever confide in you that
00:43:57 19 he was molested when he was 11 years old at Boy Scout
00:44:03 20 camp?

00:44:03 21 A. Never.

00:44:04 22 Q. Did you ever hear -- did anyone else make a
00:44:07 23 report to you that Alex was molested?

00:44:11 24 A. Not youth or adults. And that would be
00:44:16 25 information that would be shared.

00:44:17 1 Q. Because?

00:44:18 2 A. It's the policy of Boy Scouts of America. Boy
00:44:22 3 Scouts is very, very proactive on child protection. To
00:44:26 4 join Scouts in the front of the handbook is a handbook
00:44:31 5 for the parents and the Scout, and they actually have to
00:44:35 6 go over that together and sign off that they understand
00:44:37 7 it. And it lays out the importance -- we call them the
00:44:41 8 three Rs: recognize, resist, and report. Those are the
00:44:48 9 three Rs of youth protection. And this is drilled into
00:44:51 10 the boys every year. We do that with them. And also
00:44:56 11 all adults have to have youth protection training in
00:45:01 12 order to participate with youth.

00:45:05 13 Q. Do the Boy Scouts take an oath?

00:45:08 14 A. Absolutely. Every meeting.

00:45:10 15 Q. Will you recite that oath for the jury.

00:45:12 16 A. On my honor I will do my best to do my duty to
00:45:20 17 guide my country, to obey the Scout law, to help other
00:45:23 18 people at all times, to keep myself physically strong,
00:45:26 19 mentally awake, and morally straight.

00:45:31 20 Q. And is that a goal that Eagle Scouts take as
00:45:34 21 well?

00:45:34 22 A. Absolutely.

00:45:36 23 Q. And that is a lifelong goal that Scouts endeavor
00:45:41 24 to keep?

00:45:41 25 A. During their Eagle ceremony, they are given what

00:45:45 1 is called the Eagle Charge by an elder Eagle. And in
00:45:52 2 that they have to swear renewed allegiance on their
00:46:00 3 honor to uphold the Scout oath and the law.

00:46:04 4 Q. And that includes all aspects of the Scout oath?

00:46:09 5 A. All aspects of the Scout oath and the law.

00:46:12 6 Q. Including to be morally straight?

00:46:14 7 A. Morally straight.

00:46:15 8 MS. KELLEY: Thank you. No more questions.

00:46:18 9 THE COURT: Mr. Secor.

00:46:20 10 - - -

00:46:20 11 MARK VANCE, CROSS-EXAMINATION

00:46:21 12 BY MR. SECOR:

00:46:21 13 Q. Mr. Vance, you testified that Mr. Cook is an
00:46:25 14 Eagle Scout; is that correct?

00:46:27 15 A. Yes. Alex.

00:46:30 16 Q. And that's the highest level, isn't it?

00:46:33 17 A. Yes.

00:46:34 18 Q. And the way to achieve or one of the ways to
00:46:37 19 achieve that level is to earn merit badges; is that
00:46:42 20 correct?

00:46:42 21 A. There are required merit badges and there are
00:46:44 22 optional merit badges. And there's 21, I believe, that
00:46:48 23 have to be earned in order to achieve that rank.

00:46:51 24 Q. There's 21 that are must be, then how many
00:46:55 25 additional ones may you earn in order to attain the

00:46:58 1 rank?

00:46:59 2 A. I think right now the number's about 108 that are
00:47:05 3 available. Most kids earn 25, 26; exceptional ones earn
00:47:15 4 30.

00:47:17 5 Q. Now, to earn a merit badge there are magazines
00:47:23 6 and reading material that go with each badge, are there
00:47:27 7 not?

00:47:27 8 A. There's the merit badge pamphlet that has all of
00:47:32 9 the requirements, and then it has a short explanation of
00:47:39 10 what the merit badge constitutes, the information that
00:47:42 11 you need.

00:47:42 12 Q. They're instructional?

00:47:44 13 A. Right.

00:47:45 14 Q. And, in fact, some of them, at least from my
00:47:50 15 recollection of 40 years ago, get rather complicated,
00:47:56 16 don't they?

00:47:57 17 A. Extremely.

00:48:01 18 Q. So one needs to be able to read and comprehend
00:48:05 19 these, as you say, pamphlets in order to succeed and
00:48:12 20 earn the merit badge; is that correct?

00:48:15 21 A. And they also need to be guided by their
00:48:17 22 counselor. So it's the pamphlet, the counselor, the
00:48:23 23 Scout; it all comes together. When it's accomplished,
00:48:28 24 it's awarded.

00:48:34 25 MR. SECOR: I have nothing further.

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MARK VANCE, REDIRECT EXAMINATION

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BY MS. KELLEY:

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Q. The U.S. Attorney referred to a number of pamphlets. Did Alex have any assistance with reading those pamphlets?

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A. A lot of times it would be the counselor's job --

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MR. SECOR: Objection, Your Honor. The question should be --

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THE COURT: I understand. The question is specifically related to Mr. Cook and what you may have observed in that regard individually, not what you might have heard from somebody.

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A. What I individually did when he was in my family life was basically I walked him -- I told him the requirements. I listened to his input of what he wanted to do, what he wanted to do accomplish, and then I specifically instructed him on the different aspects of what is in the manual. I don't know for a fact that Alex actually read the manual because it's difficult for him.

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Q. Okay.

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A. But as counselor I would make sure that he knew the information.

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Q. Wonderful. And isn't it true that most of the

00:49:56 1 merit badges he earned were at camp?

00:49:58 2 A. Yes.

00:49:58 3 Q. They were sort of skill related?

00:50:00 4 A. Right.

00:50:03 5 MS. KELLEY: Thank you. No more questions.

00:50:03 6 MR. SECOR: Nothing further.

00:50:05 7 THE COURT: Mr. Vance, you may step down.

00:50:07 8 You're free to stay or welcome to go. Thank you very
00:50:12 9 much.

00:50:29 10 Ms. Kelley, who is your next witness and
00:50:32 11 what will they tell us?

00:50:34 12 MS. KELLEY: This is Ann Vance, and she is a
00:50:36 13 teacher at Fredericktown High School, and she has been
00:50:44 14 in charge of Alex's IEPs, individualized education
00:50:51 15 plans, for a number of years and has observed Alex in
00:50:56 16 the act of reading and otherwise being educated.

00:51:04 17 (The witness was sworn by the clerk.)

00:51:14 18 THE COURT: You may be seated. And if you
00:51:17 19 can -- it's a little cumbersome, but if you can slide
00:51:22 20 your chair forward. Will you please tell the ladies and
00:51:30 21 gentlemen of the jury your name.

00:51:31 22 THE WITNESS: Ann Vance.

00:51:37 23 THE COURT: Where do you live? What town?

00:51:39 24 THE WITNESS: Fredericktown, Ohio.

00:51:41 25 THE COURT: Ms. Kelley indicated you're a

00:51:44 1 teacher, correct?

00:51:45 2 THE WITNESS: Yes.

00:51:45 3 THE COURT: How long have you been a
00:51:46 4 teacher?

00:51:47 5 THE WITNESS: Since about '87.

00:51:51 6 THE COURT: And where do you teach?

00:51:53 7 THE WITNESS: At Fredericktown High School.

00:51:54 8 THE COURT: How long have you been there?

00:51:56 9 THE WITNESS: Since the fall of 1990.

00:51:58 10 THE COURT: And what subjects do you teach?

00:52:00 11 THE WITNESS: I teach special ed and chorale
00:52:05 12 music.

00:52:07 13 THE COURT: What generally is special ed?
00:52:10 14 What's that all about?

00:52:11 15 THE WITNESS: Working with students that
00:52:13 16 have learning disabilities.

00:52:15 17 THE COURT: And do you know Mr. Alex Cook?

00:52:18 18 THE WITNESS: Yes.

00:52:18 19 THE COURT: Okay. Ms. Kelley.

00:52:20 20 MS. KELLEY: Thank you.

00:52:21 21 - - -

00:52:21 22 ANN VANCE, DIRECT EXAMINATION

00:52:22 23 BY MS. KELLEY:

00:52:22 24 Q. Good morning, Ann.

00:52:23 25 A. Good morning.

00:52:24 1 Q. How long have you known Alex?

00:52:26 2 A. Probably since he was in junior high.

00:52:28 3 Q. All right. And he was a special ed student,
00:52:32 4 correct?

00:52:33 5 A. Yes.

00:52:34 6 Q. All right. Describe for the jury the reason why
00:52:37 7 Alex needed special ed?

00:52:39 8 A. Because he was getting behind in his work,
00:52:46 9 teachers noticed that he wasn't achieving as he should
00:52:49 10 have been for his grade level, and so he was tested by
00:52:53 11 the school psychologist.

00:52:54 12 Q. And about what time was this?

00:52:56 13 A. I know he had an IEP from third grade on.

00:53:02 14 THE COURT: Excuse me. What is an IEP?

00:53:05 15 THE WITNESS: An individualized education
00:53:07 16 plan.

00:53:07 17 THE COURT: And if I may, just again, what
00:53:09 18 all does that involve, and how is that formulated, and
00:53:14 19 so forth?

00:53:15 20 THE WITNESS: Okay. It is formed after the
00:53:20 21 school psychologist puts the student through many tests
00:53:24 22 and gets input from the teachers as to their performance
00:53:28 23 in the classroom and so forth, and then uses the results
00:53:33 24 to determine if they have a learning disability. If
00:53:36 25 they are not performing academically up to the level

00:53:41 1 that they should be for their intelligence level, if
00:53:46 2 their performance is not the same as what it should be,
00:53:50 3 then they -- we draw up an IEP, an individual plan for
00:53:57 4 them for the year. Each year they get a new one. And
00:54:00 5 it's just putting down goals and objectives that we're
00:54:04 6 going to work on that year to help them deal with their
00:54:09 7 disability and do better in the classroom.

00:54:14 8 MS. KELLEY: Can I continue, Your Honor?

00:54:15 9 THE COURT: Of course. By all means.

00:54:18 10 BY MS. KELLEY:

00:54:18 11 Q. Could you describe the specific nature of Alex's
00:54:22 12 learning disability? What did he have problems with?

00:54:25 13 A. Alex had problems with three areas: basic
00:54:28 14 reading was one; math calculations was one; and written
00:54:33 15 expression, writing, putting together a good paragraph.

00:54:36 16 Q. So I want to focus on the reading aspect. When
00:54:43 17 Alex graduated from high school, did you know him?

00:54:47 18 A. Yes.

00:54:49 19 Q. And when he graduated from high school, at
00:54:52 20 approximately what reading level did he perform at?

00:54:56 21 A. The last two years, his junior and senior year,
00:55:01 22 he was at the career center, so I did not write that
00:55:06 23 IEP. I wrote it for his ninth and tenth grade year.
00:55:10 24 But basically as he was going through he was about two
00:55:13 25 to two and a half years behind grade level in his

00:55:17 1 reading ability.

00:55:18 2 Q. Okay. And was that under circumstances with
00:55:25 3 accommodations or without accommodations?

00:55:27 4 A. That would be without accommodations. Yes.

00:55:32 5 Q. And tell the jury what type of accommodations
00:55:40 6 Fredericktown High School recommended for Alex.

00:55:42 7 A. He could have tests read to him if he opted for
00:55:46 8 it. He could be pulled out into a smaller -- if the
00:55:50 9 class was having a test, then he could be pulled out
00:55:54 10 into a smaller setting, taken off one-on-one; or if
00:55:57 11 there were other special ed kids in the same group, a
00:56:02 12 smaller setting so it was less stress and he could be
00:56:05 13 read to. He could use highlighters, things like that.

00:56:09 14 Q. Was he given extra time?

00:56:10 15 A. Yes. Definitely. He could have extra time on
00:56:13 16 tests, yes.

00:56:14 17 Q. And if you remember, how did Alex perform under
00:56:19 18 stress?

00:56:24 19 A. I didn't see -- well, when we would have, like,
00:56:27 20 the OGT, the Ohio graduation test, there again, he was
00:56:32 21 allowed -- we tried to take away some of the stress, and
00:56:36 22 allowed him to be in a smaller setting and so forth and
00:56:40 23 have the same availability of having tests read to him
00:56:44 24 and so forth. Other than that, I didn't really see him
00:56:48 25 in a stressful situation. When he would come to my

00:56:51 1 room it was supposed to be less stressful.

00:56:55 2 Q. Now you mentioned the OGTs a moment ago. Did
00:57:00 3 Alex eventually pass?

00:57:01 4 A. He did. He did.

00:57:02 5 Q. But that -- again, that was with special
00:57:04 6 accommodations?

00:57:04 7 A. That was -- right.

00:57:06 8 Q. And do you remember how he did on the reading
00:57:13 9 portion at all?

00:57:16 10 A. No, I don't. I'm sorry.

00:57:19 11 MS. KELLEY: If I can have a moment, Your
00:57:21 12 Honor.

00:57:21 13 THE COURT: Of course.

00:57:22 14 (Discussion had off the record.)

00:57:24 15 BY MS. KELLEY:

00:57:25 16 Q. Final set of questions, ma'am. You mentioned
00:57:28 17 earlier on that Alex could have special accommodations
00:57:32 18 if he wanted to.

00:57:34 19 A. Uh-huh.

00:57:34 20 Q. Was Alex open about the fact that he had
00:57:38 21 difficulty reading?

00:57:40 22 A. Alex was more -- he did things more on his own.
00:57:45 23 He did not ask for a lot of help. A lot of students are
00:57:50 24 embarrassed because they have a disability. He was one
00:57:53 25 that tried to do things more on his own. He had the

00:57:56 1 accommodations, but he was --

00:57:59 2 Q. He wanted to be normal?

00:58:01 3 A. He wanted to be normal. Yes.

00:58:04 4 Q. And did you ever get the sense that Alex was
00:58:11 5 trying to get into learning -- special ed so he could
00:58:16 6 get special treatment or not have to work as hard as the
00:58:19 7 other kids?

00:58:20 8 A. No. Not at all. No.

00:58:21 9 Q. And did you -- what did you feel about the effort
00:58:26 10 he put into his work?

00:58:29 11 A. He made an effort. Part of his problem some of
00:58:33 12 the time was that he wouldn't turn in homework as much
00:58:37 13 as he should. He'd get a little bit behind on that.
00:58:40 14 But no, Alex made an effort. He did. He tried. It was
00:58:45 15 just more difficult for him.

00:58:47 16 MS. KELLEY: Thank you. No more questions.

00:58:52 17 MR. SECOR: No questions, Your Honor.

00:58:54 18 THE COURT: You may step down. You're free
00:58:56 19 to go or welcome to stay. Thank you for coming.

00:59:24 20 MS. KELLEY: We're prepared to call our next
00:59:26 21 witness, Your Honor.

00:59:27 22 THE COURT: That is?

00:59:28 23 MS. KELLEY: That is Alex Cook.

00:59:44 24 (The witness was sworn by the clerk.)

00:59:55 25 THE COURT: Mr. Cook, if you'll slide so we

01:00:02 1 can hear you but not so close that we get a lot of
01:00:05 2 feedback.

01:00:06 3 Tell the ladies and gentlemen your name.

01:00:08 4 THE WITNESS: My name is Alex Cook.

01:00:13 5 THE COURT: And what's your community of
01:00:14 6 residence?

01:00:15 7 THE WITNESS: As of right now,
01:00:16 8 Fredericktown, Ohio.

01:00:19 9 THE COURT: Ms. Kelley.

01:00:20 10 - - -

01:00:20 11 ALEX COOK, DIRECT EXAMINATION

01:00:20 12 BY MS. KELLEY:

01:00:20 13 Q. Good morning, Alex.

01:00:22 14 A. Good morning.

01:00:23 15 Q. Alex, I want to start first with some major
01:00:27 16 topics and then delve into some more minor topics.

01:00:33 17 First of all, let's talk about your apartment at
01:00:39 18 1268 Knollwood. How long had you lived there?

01:00:45 19 A. From when? Like, the whole period of time?

01:00:48 20 Q. Yes.

01:00:49 21 A. About seven months, eight months.

01:00:51 22 Q. When did you move in?

01:00:53 23 A. End of April.

01:00:54 24 Q. Of what year?

01:00:54 25 A. Of 2011 -- or 2010, sorry.

01:00:58 1 Q. 2010?

01:00:59 2 A. Yeah.

01:01:00 3 Q. And when did you move out?

01:01:02 4 A. That same year; September, I do believe.

01:01:08 5 Q. Shortly after the search warrant was executed?

01:01:11 6 A. Yes, ma'am.

01:01:12 7 Q. And did you have a roommate during this time?

01:01:15 8 A. Yes, ma'am.

01:01:16 9 Q. And what was his name?

01:01:17 10 A. Ian Douglas.

01:01:19 11 Q. Have you talked to Ian since the search warrant
01:01:22 12 happened?

01:01:22 13 A. No.

01:01:23 14 Q. What happened to Ian?

01:01:25 15 A. The day of -- the search was done, Ian tried to
01:01:29 16 leave the house. He tried to move out. He -- I told
01:01:34 17 him he needed to stay for reason being that I couldn't
01:01:37 18 afford the bills; otherwise, the apartment complex was
01:01:40 19 going to charge.

01:01:44 20 Q. Would you speak a little more slowly and loudly.

01:01:48 21 A. He tried to leave the apartment the day the
01:01:51 22 search warrant was executed after the FBI agents had
01:01:53 23 left. Then I let him know that the apartment was going
01:01:57 24 to charge me \$2,500 if he was going to try to get out of
01:02:02 25 the contract early and that he was going to owe me his

01:02:04 1 portion of the bills that he agreed to pay when he
01:02:08 2 signed the contract to the apartment.

01:02:10 3 Q. Okay. Did he end up paying the bills?

01:02:14 4 A. He missed two payments on bills that he promised
01:02:19 5 me that he would make. I was trying to make
01:02:22 6 accommodations to him because I was the one that footed
01:02:26 7 the down payment on the apartment. And what our
01:02:29 8 agreement was is that he would pay one time winter cable
01:02:33 9 bill. That's all he needed to do.

01:02:34 10 Q. When I hear that Ian owed you money, I could jump
01:02:39 11 to the conclusion that you're mad at him because he
01:02:44 12 stiffed you and you're trying to pin this on him. Are
01:02:47 13 you?

01:02:47 14 A. No. I didn't mind that he had -- didn't have any
01:02:50 15 money. I knew he didn't have a job at the time.

01:02:52 16 Q. Didn't have a job at what time?

01:02:54 17 A. The whole time we lived at the apartment.

01:02:56 18 Q. So what did he do during the day?

01:02:58 19 A. He was at the apartment all day. Some days he'd
01:03:02 20 go out and hang out with the neighbors across the
01:03:04 21 street. That was about it.

01:03:05 22 Q. Did he go to class at all?

01:03:06 23 A. Yes, he went to class in the morning, the same
01:03:09 24 time I did.

01:03:09 25 Q. But he came home in the afternoon?

01:03:11 1 A. Came home right after class.

01:03:12 2 Q. How was he supporting himself?

01:03:14 3 A. His parents were paying for everything.

01:03:17 4 Q. How long had you known Ian?

01:03:18 5 A. Since my freshman year in high school.

01:03:21 6 Q. Okay. Why did you choose him as a roommate?

01:03:24 7 A. Him and I, we went to the career center. We hung
01:03:28 8 out quite a bit outside school and during school. He
01:03:32 9 was also in the IEP program with me; that's how we first
01:03:35 10 met. And then once we got out of school, him and I
01:03:38 11 worked together at Whiteford Rental and Sales in Mt.
01:03:41 12 Vernon, Ohio; we were yard hands there.

01:03:45 13 Q. Did you have a computer during this time?

01:03:47 14 A. Yes, ma'am.

01:03:48 15 Q. Tell the jury what kind of computer?

01:03:50 16 A. An HP laptop.

01:03:52 17 Q. And how long did you have that?

01:03:53 18 A. Since my graduation party in 2009.

01:03:57 19 Q. So that would be spring of '09?

01:03:59 20 A. Yes, ma'am.

01:04:00 21 Q. Ever have any other computers during that time?

01:04:02 22 A. No, ma'am.

01:04:03 23 Q. Did Ian have a computer when he moved in?

01:04:06 24 A. Originally when he first moved in, no, he did
01:04:10 25 not.

01:04:10 1 Q. When did he get one?

01:04:11 2 A. About a month after he lived there.

01:04:14 3 Q. And what kind of computer was that?

01:04:17 4 A. It was an older Dell laptop.

01:04:19 5 Q. And during the time that Ian was living with you,
01:04:24 6 did he have any other computers?

01:04:27 7 A. Two more after that.

01:04:28 8 Q. Two more?

01:04:29 9 A. Yes, ma'am.

01:04:30 10 Q. And this is in how many months?

01:04:31 11 A. Eight months.

01:04:33 12 Q. What kind of computers were they?

01:04:35 13 A. The second one was a Verizon notebook; he had
01:04:40 14 that for about a month or two, then I lost it.

01:04:46 15 Q. He did what with it?

01:04:47 16 A. I lost track of it. I never saw it.

01:04:49 17 Then he came up with -- I do believe it was a
01:04:51 18 Toshiba. It was the final one the FBI searched at the
01:04:55 19 house.

01:04:56 20 Q. Do you know what he did with that Toshiba when he
01:04:59 21 left?

01:04:59 22 A. I have no idea.

01:05:10 23 Q. Did you guys ever share things?

01:05:12 24 A. We shared everything; sweatshirts, T-shirts,
01:05:15 25 things like that. The only thing we didn't really

01:05:18 1 share was our hats. It was kind of our thing. But
01:05:21 2 other than that, he drove my truck, I drove his truck.
01:05:24 3 Things like that. We shared tools, everything.

01:05:26 4 Q. Did you share computers?

01:05:27 5 A. Yes.

01:05:37 6 Q. I want to talk about this computer. Was it
01:05:39 7 password protected?

01:05:41 8 A. Yes, ma'am.

01:05:41 9 Q. So if you sat down to use it, could only you use
01:05:46 10 it?

01:05:47 11 A. No, ma'am. Ian also had the password to my
01:05:52 12 laptop.

01:05:53 13 Q. Ian had your password?

01:05:54 14 A. Yes, ma'am.

01:05:55 15 Q. And there was also testimony earlier on that
01:05:58 16 there was some sort of fingerprint identity device.

01:06:01 17 A. There is a fingerprint scanner when you flip the
01:06:05 18 laptop up; it's on the right side on the middle of the
01:06:09 19 edge of the screen.

01:06:10 20 Q. Would that prevent someone else from getting in?

01:06:12 21 A. No, because you could also just type in the
01:06:15 22 password and the password would bypass that.

01:06:23 23 Q. Now, I want to talk about this supposed
01:06:27 24 confession you made to the police marked as Government's
01:06:34 25 Exhibit 9. There were some allegations -- strike that.

01:06:43 1 Dr. Graves testified yesterday. Do you recall
01:06:46 2 that?

01:06:46 3 A. Yes, ma'am.

01:06:47 4 Q. And he recalls that you told him that there was
01:06:51 5 yelling in the interrogation room.

01:06:54 6 A. Yes, ma'am.

01:06:54 7 Q. That is to say that Agent Pape from the FBI was
01:06:58 8 yelling at you?

01:06:59 9 A. Yes, ma'am.

01:07:00 10 Q. Did you believe it was yelling?

01:07:02 11 A. Yes, ma'am.

01:07:03 12 Q. Why?

01:07:04 13 A. It was just -- he was getting in my face. At
01:07:07 14 first -- at first when we first got there he was very --
01:07:11 15 it was very relaxed. He was being nice. And it
01:07:15 16 gradually started getting worse and worse and worse.
01:07:18 17 And I kept telling him that I had no idea what he was
01:07:21 18 talking about.

01:07:22 19 Q. The \$64,000 question is: Why did you go with
01:07:26 20 these guys? I mean, ten law enforcement agents come
01:07:30 21 into your apartment. Why did you just go with them?

01:07:33 22 A. I had nothing to hide. There was nothing I knew
01:07:35 23 of anything going on or anything like that. I had no
01:07:38 24 reason not to go with them, to comply.

01:07:40 25 Q. And we learned through Dr. Graves and through

01:07:45 1 your father's testimony that you and your father are
01:07:48 2 very close. Why didn't you take out your cell phone and
01:07:51 3 call your dad that morning?

01:07:52 4 A. I attempted to.

01:07:53 5 Q. But what happened?

01:07:55 6 A. Agent Pape told me to put it away.

01:07:58 7 Q. Now, I anticipate that you will be asked that you
01:08:07 8 supposedly confessed when you were standing outside the
01:08:10 9 apartment to having child pornography on your computer.
01:08:15 10 Did you make such a confession?

01:08:17 11 A. I did not.

01:08:19 12 Q. What, if anything, did you tell law enforcement
01:08:22 13 while you were waiting outside your apartment and they
01:08:25 14 were searching?

01:08:26 15 A. When they first got there, they pulled us out the
01:08:31 16 front door. Agent Schulte was right at the front door.
01:08:35 17 He's the one that pulled me out the front door. Ian was
01:08:38 18 right behind me. When they first went in, they searched
01:08:44 19 the house to make sure there were no dangers or anything
01:08:48 20 like that that we were going to harm them. We went
01:08:50 21 upstairs, changed clothes, then I was interviewed inside
01:08:54 22 the living room by Agent Pape.

01:08:56 23 Q. So you and Ian were interviewed separately?

01:08:59 24 A. Yes. Ian was outside. I was inside.

01:09:02 25 Q. Continue. I interrupted you.

01:09:04 1 A. Agent Pape first started asking me an e-mail
01:09:11 2 address, and I had no idea what he was talking about. I
01:09:15 3 never heard of the e-mail address before. I never used
01:09:18 4 the e-mail address.

01:09:19 5 Q. What e-mail address?

01:09:20 6 A. Evidently later on I came to find out it was the
01:09:24 7 e-mail address given to me by Time Warner Cable. I had
01:09:28 8 no idea I had that e-mail address. He was sitting there
01:09:31 9 accusing me of lying to him about that. And I honestly
01:09:34 10 had no idea that they'd given me an e-mail address.

01:09:38 11 Then he asked me why I thought they were there.

01:09:42 12 I told him I have no idea why you would even come
01:09:46 13 to my apartment. He went on to say that it was for
01:09:50 14 investigation into child pornography. And he started
01:09:52 15 asking me about it. And I told him I had no idea what
01:09:55 16 he was talking about or anything of that nature. I told
01:09:59 17 him that there were two images that could be considered
01:10:05 18 child pornography, but I wasn't sure.

01:10:07 19 Q. Two images where?

01:10:08 20 A. In the deleted on my computer.

01:10:11 21 Q. Two images in the deleted file that could be --

01:10:12 22 A. On my computer. That's all the further we
01:10:15 23 discussed.

01:10:16 24 Q. Let's talk about those two images. How did they
01:10:20 25 pop up? When did they pop up?

01:10:22 1 A. I got home from work one night.

01:10:24 2 Q. When approximately was that?

01:10:25 3 A. 10:00, 11:00 at night is usually about the time I
01:10:29 4 got home.

01:10:30 5 Q. Okay.

01:10:30 6 A. I walked in. I went upstairs to finish typing up
01:10:34 7 a document that I had to do the next day for my -- I do
01:10:39 8 believe it was for my communications class.

01:10:41 9 Q. Let's hold it right there. You're typing up a
01:10:44 10 document. We've heard lots of testimony that you have a
01:10:47 11 learning disability, you have problems with spelling and
01:10:51 12 writing. How were you able to draft a document?

01:10:53 13 A. At the school I would type it up and I would
01:10:58 14 e-mail it to my teachers. They would do finalizations
01:11:04 15 for me, things like that, do a lot of corrections. It
01:11:07 16 usually took me about four or five times to send it to
01:11:10 17 them. They'd send it back with corrections I needed to
01:11:13 18 make, things like that before I actually got the
01:11:15 19 document correct.

01:11:16 20 Q. Okay. Okay. Then please continue.

01:11:19 21 A. I opened -- I went upstairs. I opened up my
01:11:22 22 computer. And as soon as it came out of sleep mode they
01:11:27 23 were just up on the computer.

01:11:29 24 Q. So you just got it out of sleep mode and these
01:11:32 25 images appeared?

01:11:34 1 A. Yes, ma'am.

01:11:34 2 Q. When was the last time you used that computer?

01:11:37 3 A. It was probably a day or two before that.

01:11:42 4 Q. Okay. And had you been conducting any searches
01:11:48 5 that would lead to those images coming up?

01:11:51 6 A. At that time, no.

01:11:54 7 Q. So what did you do?

01:11:55 8 A. I just deleted them, didn't think anything of it.
01:11:58 9 I was kind of hesitant to try to figure out how they got
01:12:02 10 on there, but I didn't look into it.

01:12:04 11 Q. Okay. Now, there have been allegations that
01:12:09 12 there's adult pornography on your computer. Is that
01:12:13 13 true?

01:12:13 14 A. Yes, ma'am.

01:12:16 15 Q. And there was also a comment by Dr. Graves
01:12:20 16 yesterday that you had an interest in individuals around
01:12:32 17 your age, give or take three or four years. Would that
01:12:37 18 be correct?

01:12:38 19 A. Not exactly, no.

01:12:40 20 Q. What do you mean? If you're comfortable, tell
01:12:45 21 us what your object of fascination is.

01:12:48 22 A. Typically the same age or older.

01:12:51 23 Q. Same age or older. So 19 and above?

01:12:58 24 A. Yes, ma'am.

01:13:00 25 Q. Now, after you told the agent that nothing was on

01:13:04 1 your computer other than these two images that you
01:13:08 2 deleted, what happened?

01:13:09 3 A. He told me that if I would come with them to the
01:13:13 4 field office that we could just get this all cleared up
01:13:16 5 today and move on.

01:13:18 6 Q. Okay.

01:13:19 7 A. So that's one of the reasons why I went with
01:13:22 8 them. I went with them -- I went out to get my truck.
01:13:26 9 He said we could just take his car; it was closer. So
01:13:29 10 we walked down to the end of the parking lot to his car.

01:13:32 11 Q. Stop for a minute. Tell us a bit about this
01:13:36 12 parking lot. What kind of cars were typically in the
01:13:41 13 parking lot?

01:13:41 14 A. Mainly trucks.

01:13:42 15 Q. Trucks?

01:13:43 16 A. Yes, ma'am.

01:13:44 17 Q. Okay. Who all lived in this apartment complex?

01:13:47 18 A. This apartment complex mainly consisted of
01:13:50 19 college students that did not want to live on campus.

01:13:55 20 Q. Now, there was testimony by Agent Schulte that
01:13:59 21 the FBI had surveyed your apartment five times during
01:14:06 22 the month of September. Did you, yourself, notice an
01:14:10 23 undercover car?

01:14:12 24 A. We noticed a suspicious vehicle moving around the
01:14:16 25 area, yes.

01:14:17 1 Q. Who is "we"?

01:14:18 2 A. Ian, my roommate; my neighbors.

01:14:22 3 Q. How many times did you notice the suspicious
01:14:25 4 vehicle?

01:14:26 5 A. Two or three times.

01:14:27 6 Q. Okay. So you're in transit to the FBI office.
01:14:34 7 Then what happened?

01:14:35 8 A. We get to the FBI office. We go upstairs. Agent
01:14:41 9 Schulte opens the door. We go upstairs. We go inside
01:14:44 10 his office. And as soon as you get inside the door
01:14:47 11 there's a metal detector then there's a door off to your
01:14:50 12 immediate left. And then we went into to door off to
01:14:53 13 the immediate left, and Schulte and Agent Pape both
01:14:57 14 accompanied me in there.

01:14:58 15 Q. Okay. There's been testimony that you were given
01:15:03 16 a couple of consent forms and waiver forms to sign. Do
01:15:09 17 you remember that?

01:15:09 18 A. Yes, ma'am.

01:15:10 19 Q. Okay. Let's talk first about the consent to
01:15:14 20 search forms. Did you actually read those?

01:15:19 21 A. No. The one he said was just the advice of
01:15:23 22 rights.

01:15:23 23 Q. No, the consent. The consent to search. Did you
01:15:27 24 actually read it?

01:15:28 25 A. No.

01:15:29 1 Q. Why did you sign it?

01:15:30 2 A. Because I had nothing in the car to hide.

01:15:34 3 Q. Did they tell you what it was?

01:15:36 4 A. Basically, yes.

01:15:37 5 Q. So they sort of summarized?

01:15:38 6 A. Yes.

01:15:39 7 Q. Now about the advice. Did you read that?

01:15:42 8 A. No.

01:15:43 9 Q. Why not?

01:15:44 10 A. I just -- he explained to me it was like as you
01:15:48 11 see on TV.

01:15:49 12 THE COURT: I couldn't hear the last part of
01:15:51 13 your answer.

01:15:51 14 THE WITNESS: He explained to me it's just
01:15:54 15 like you see on TV.

01:15:58 16 BY MS. KELLEY:

01:15:59 17 Q. Then let's talk about the circumstances of the
01:16:02 18 actual confession. Are you alleging that these guys
01:16:06 19 beat a confession out of you?

01:16:08 20 A. No, ma'am.

01:16:08 21 Q. Okay. I want to read to you this supposed
01:16:13 22 confession line by line, and I want to ask you some
01:16:16 23 questions.

01:16:18 24 The first line is in regards to having child
01:16:22 25 pornography images on computer.

01:16:24 1 "I do have child pornography images on my
01:16:28 2 personal laptop computer which was in my bedroom of my
01:16:32 3 apartment on 1268 Knollwood in Lima, Ohio?"

01:16:38 4 Did you say anything like that?

01:16:41 5 A. No.

01:16:41 6 Q. Is any portion of that true?

01:16:44 7 A. The laptop was in my room, yes.

01:16:46 8 Q. But what about child pornography on it?

01:16:48 9 A. No.

01:16:50 10 Q. Now, the next sentence is, "I started viewing
01:16:53 11 adult pornography about three years ago when I was
01:16:57 12 around 17 years old." Is that true?

01:17:00 13 A. Yes.

01:17:02 14 Q. Next sentence. "After graduating high school and
01:17:05 15 leaving home for my job travelling construction, I
01:17:09 16 started viewing child pornography after finding a
01:17:18 17 desensitization to adult pornography."

01:17:26 18 By my calculation, that means you started
01:17:30 19 looking -- well, strike that.

01:17:33 20 When were you travelling construction?

01:17:35 21 A. Back in '09.

01:17:36 22 Q. So that was right after you graduated from high
01:17:38 23 school?

01:17:38 24 A. Yes, ma'am.

01:17:43 25 Q. So you worked in construction for about how long?

01:17:45 1 A. Six months.

01:17:47 2 Q. During that time were you indeed looking at child
01:17:53 3 pornography?

01:17:53 4 A. If you look at the records, no.

01:17:55 5 Q. But I don't care about the records. Were you
01:17:57 6 looking at child pornography?

01:17:58 7 A. No. No, ma'am.

01:18:00 8 Q. Were you looking at adult pornography?

01:18:02 9 A. Yes, ma'am.

01:18:05 10 Q. Then the next sentence reads -- strike that.
01:18:10 11 Have you ever used the word desensitization?

01:18:12 12 A. I don't even know what that means, ma'am.

01:18:16 13 Q. The next sentence reads, "My viewing of child
01:18:21 14 pornography was at first out of curiosity mainly."

01:18:25 15 A. No, ma'am.

01:18:26 16 Q. No, what?

01:18:27 17 A. No, I did not say that.

01:18:29 18 Q. Didn't view child pornography?

01:18:32 19 A. No, ma'am.

01:18:33 20 Q. Okay. "When I was around 11 years old I was in
01:18:37 21 the woods walking to the Boy Scout camp lunch hall."
01:18:43 22 Would that be true?

01:18:44 23 A. I did walk through the woods, yes.

01:18:47 24 Q. "A guide grabbed me and fondled me until I was
01:18:51 25 able to scream and break free."

01:18:53 1 A. No, ma'am.

01:18:54 2 Q. That didn't happen?

01:18:55 3 A. No.

01:18:57 4 Q. "He ran away, and I reported this to adults in
01:19:02 5 charge."

01:19:03 6 A. No, ma'am. I didn't say any of that.

01:19:06 7 Q. You didn't report it or it didn't happen?

01:19:09 8 A. It didn't happen.

01:19:09 9 Q. And who would adults in charge have been?

01:19:12 10 A. Mark Vance; Reverend Tim Lehman, he was the camp
01:19:20 11 director; and my father was also there; and at that time
01:19:27 12 Dick Clapperoff [phonetically].

01:19:31 13 Q. "I don't know if he was ever apprehended or not."

01:19:34 14 A. I never said any of that.

01:19:36 15 Q. Okay. "I tell this because this contributed to
01:19:40 16 my curiosity with child pornography."

01:19:44 17 Did you, in fact, reveal this as the root cause
01:19:47 18 of your alleged fascination with child pornography?

01:19:50 19 A. No, ma'am.

01:19:52 20 Q. "I wanted to see what aroused him about that
01:19:55 21 situation"?

01:19:56 22 A. No, ma'am.

01:19:59 23 Q. "I downloaded child pornography from LimeWire
01:20:05 24 network"?

01:20:05 25 A. No, ma'am.

01:20:06 1 Q. Did you download adult pornography from LimeWire?

01:20:10 2 A. Yes, ma'am.

01:20:11 3 Q. Did you download anything else from LimeWire?

01:20:13 4 A. Music.

01:20:16 5 Q. And for our information, when did you first
01:20:19 6 download the LimeWire on your computer?

01:20:23 7 A. I believe it was back in '09, but I'm not
01:20:27 8 positive on when exactly it was.

01:20:29 9 Q. After you got your computer?

01:20:31 10 A. Yes, ma'am.

01:20:33 11 Q. "I searched it under," quote, "'child porn' and
01:20:38 12 found thousands upon thousands of files to choose from"?

01:20:41 13 A. No, ma'am.

01:20:42 14 Q. Ever type in the search terms child porn?

01:20:46 15 A. No, ma'am.

01:20:46 16 Q. Even on the internet?

01:20:48 17 A. No, ma'am.

01:20:50 18 Q. "I found that I did get aroused by some of the
01:20:52 19 images I saw, mainly because of the thought of it being
01:20:56 20 dirty and wrong, not the activities of the images"?

01:21:00 21 A. No, ma'am.

01:21:01 22 Q. No, what?

01:21:02 23 A. No, I did not say any of that.

01:21:06 24 Q. "I found one particular girl that reminded me of
01:21:09 25 my ex-fiancée, and that was why I downloaded several

01:21:13 1 pictures of her."

01:21:15 2 Who was your ex-fiancée?

01:21:17 3 A. I never had one, ma'am.

01:21:18 4 Q. Never had a fiancée?

01:21:20 5 A. No.

01:21:20 6 Q. Steady girlfriend?

01:21:21 7 A. The longest relationship was two months.

01:21:25 8 Q. "Most of the pictures were clothed and the images
01:21:31 9 were basically a progression as she grew older"?

01:21:35 10 A. No, ma'am.

01:21:36 11 Q. "Although I had images of child pornography
01:21:41 12 sexual activities on my computer, I did not want to see
01:21:44 13 adults with children"?

01:21:45 14 A. No, ma'am.

01:21:48 15 Q. "I was aroused most by views of children naked
01:21:51 16 and in the low teen range"?

01:21:54 17 A. No, ma'am.

01:21:55 18 Q. Kids? Do kids arouse you?

01:21:57 19 A. No.

01:21:58 20 Q. Do teenagers arouse you?

01:22:00 21 A. No, ma'am.

01:22:00 22 Q. Do preteens arouse you?

01:22:03 23 A. No, ma'am.

01:22:04 24 Q. Adult women arouse you?

01:22:05 25 A. Yes, ma'am.

01:22:06 1 Q. "At the peak I may have viewed child pornography
01:22:08 2 once a week"?

01:22:09 3 A. No, ma'am.

01:22:10 4 Q. No, what?

01:22:11 5 A. Did not say that.

01:22:12 6 Q. Ever view child pornography once a week at your
01:22:15 7 peak?

01:22:15 8 A. No, ma'am.

01:22:16 9 Q. Ever have a peak?

01:22:17 10 A. No, ma'am.

01:22:21 11 Q. "I have not viewed child pornography for a month
01:22:23 12 and am working to rid myself of viewing it at all, and
01:22:27 13 that includes all pornography"?

01:22:31 14 A. No, ma'am.

01:22:34 15 Q. Are you trying to get rid of your addiction to
01:22:37 16 adult pornography?

01:22:37 17 A. Yes, ma'am.

01:22:38 18 Q. Good.

01:22:39 19 "In an effort to do that I was bringing my
01:22:41 20 computer into Best Buy this next weekend to have the
01:22:45 21 hard drive completely erased"?

01:22:47 22 A. That is not what I said.

01:22:48 23 Q. What did you say?

01:22:49 24 A. What I said was I was taking my computer to Best
01:22:52 25 Buy because I was having troubles with it.

01:22:55 1 Q. What kind of troubles?

01:22:57 2 A. It wouldn't hook up to my printer wirelessly like
01:23:01 3 it was supposed to. It was going incredibly slow. It
01:23:05 4 wasn't like it when I got it, if that makes sense. It
01:23:08 5 wasn't as fast as it was. It would take five, ten
01:23:11 6 minutes for a document to load. For the internet to do
01:23:16 7 anything it was taking forever. So that's the reason
01:23:19 8 why I was going to take it to Best Buy to get it fixed.

01:23:23 9 Q. "I have spoken several times to my church leader
01:23:26 10 about viewing pornography and have been working to
01:23:29 11 stop"?

01:23:30 12 A. I never spoke with him about it until after I got
01:23:34 13 arrested and I came home. He actually came over and
01:23:37 14 confronted me about it and asked me if we could talk
01:23:40 15 about it.

01:23:40 16 Q. So you didn't talk to Pastor Gary until after you
01:23:44 17 had been arrested?

01:23:45 18 A. Yes, ma'am.

01:23:48 19 Q. "I do have access to younger children in the
01:23:51 20 Sunday school that I teach every other weekend in Knox
01:23:55 21 County"?

01:23:56 22 A. No, ma'am.

01:23:56 23 Q. Do you teach Sunday school?

01:23:58 24 A. No, ma'am.

01:24:00 25 Q. "These are children approximately 12 years old"?

01:24:03 1 A. I don't know. I never taught Sunday school.

01:24:08 2 Q. Don't know how old the kids are?

01:24:09 3 A. No.

01:24:10 4 Q. "I am never alone with any of them and would
01:24:13 5 never even attempt to do anything inappropriate to them,
01:24:17 6 not only because it is wrong, but also out of fear and
01:24:21 7 reputation damage"?

01:24:22 8 A. Did not say that.

01:24:24 9 Q. "I am also an Eagle Scout and a Scout leader
01:24:29 10 leading about 36 scouts in the 11 to 12 age range."

01:24:36 11 Are you an Eagle Scout?

01:24:37 12 A. Yes, ma'am.

01:24:37 13 Q. Are you a scout leader?

01:24:39 14 A. Not really. I haven't been active in it for --
01:24:42 15 since '09 because I've been on the road working in
01:24:45 16 the -- and in school.

01:24:47 17 Q. "Also with this responsibility I am never alone
01:24:50 18 with any child, nor would I ever think of doing anything
01:24:54 19 inappropriate"?

01:24:56 20 A. Can you repeat that one more time.

01:24:57 21 Q. Sure. "Also with this responsibility I am never
01:25:02 22 alone with any child, nor would I ever think of doing
01:25:08 23 anything inappropriate"?

01:25:11 24 A. I don't remember ever saying that.

01:25:13 25 Q. Let's bounce back to being an Eagle Scout. There

01:25:18 1 were questions by Mr. Secor about the manuals?

01:25:22 2 A. Yes, ma'am.

01:25:22 3 Q. I presume Mr. Secor was an Eagle Scout. How did
01:25:26 4 you get through the manuals?

01:25:27 5 A. Most of my merit badges were done at camp. Every
01:25:32 6 time at camp -- I actually went back to be an instructor
01:25:36 7 at camp. What we would do and what I would do is I
01:25:40 8 would go through the outline of what the merit badge
01:25:45 9 requires and the requirements of the merit badge.

01:25:48 10 Q. How did you get the outline?

01:25:49 11 A. When I started working there, the director of my
01:25:54 12 department, I was handicraft, he explained to me what I
01:26:00 13 needed to tell him. He went through everything with me.
01:26:04 14 And he pretty much gave me the rules to teach -- what I
01:26:11 15 taught in handicraft was woodworking. We made wooden
01:26:15 16 benches, like collapsable chairs, I guess you could say,
01:26:20 17 out of two-by-12s.

01:26:22 18 Q. So that's how you got through the manuals?

01:26:24 19 A. Yes, they would explain it to me, show me what to
01:26:27 20 do.

01:26:27 21 Q. Did you ever try and pretends that you, yourself,
01:26:30 22 were reading the manual?

01:26:31 23 A. No, ma'am.

01:26:32 24 Q. It was open knowledge that folks were helping you
01:26:35 25 get through the manual?

01:26:36 1 A. Yes, ma'am.

01:26:38 2 Q. Final paragraph. "In viewing child pornography,
01:26:43 3 I have found that some children that I know can remind
01:26:46 4 me of or resemble some images that I have viewed of
01:26:51 5 child pornography"?

01:26:52 6 A. No, ma'am.

01:26:53 7 Q. No, what?

01:26:54 8 A. I never said that.

01:26:56 9 Q. "I do not fantasize about any children in that
01:27:00 10 way, but I have found that I notice the similarity to
01:27:06 11 real children and child pornography images"?

01:27:11 12 A. No, ma'am.

01:27:13 13 Q. Okay. "I have never touched or had any sexual
01:27:16 14 contact with any person under the age of 18"?

01:27:20 15 A. No, ma'am.

01:27:22 16 Q. No, what?

01:27:23 17 A. I have never said that, nor have I done it.

01:27:27 18 Q. So you've never had sexual contact with anyone
01:27:30 19 under 18?

01:27:30 20 A. No, ma'am.

01:27:31 21 Q. Just for the record, you never said this?

01:27:34 22 A. No, ma'am.

01:27:36 23 Q. Now, when you were -- after you signed this
01:27:44 24 alleged confession, were you given a hard copy when you
01:27:52 25 walked out the door?

01:27:53 1 A. No, ma'am.

01:27:53 2 Q. Were you given a hard copy of any of the forms
01:27:58 3 you signed that morning?

01:28:00 4 A. The only one that I got was -- copies of the
01:28:04 5 forms I got was the receipt of what the FBI agents took,
01:28:09 6 and that was it.

01:28:10 7 Q. The inventory search?

01:28:12 8 A. Yes, ma'am.

01:28:13 9 Q. You got a copy of that for your records?

01:28:15 10 A. Yes, ma'am.

01:28:16 11 Q. Now, I want to go back to the setup of the room
01:28:20 12 where the alleged confession took place. Describe the
01:28:28 13 circumstances in which you were allowed to review your
01:28:36 14 supposed statement. Were you given a chance to read
01:28:40 15 this?

01:28:41 16 A. Not completely, no.

01:28:42 17 Q. What do you mean by "not completely"?

01:28:44 18 A. He scrolled through it really fast and I --

01:28:46 19 Q. Who's "he"?

01:28:47 20 A. Agent Pape.

01:28:48 21 Q. And what do you mean by "scrolled through it"?

01:28:51 22 A. Scrolled through it, meaning it was on the
01:28:53 23 computer screen, so he'd slide it down through the
01:28:57 24 computer screen relatively fast.

01:28:59 25 Q. What do you mean by fast?

01:29:01 1 A. A lot faster than I could read anything.

01:29:04 2 Q. Okay. So he went through the -- what did you do
01:29:10 3 when he scrolled to the end?

01:29:12 4 A. I didn't see any reason not to believe what he
01:29:17 5 told me that it was about, so I just signed it so I
01:29:22 6 could get out of there.

01:29:23 7 Q. Now, I can't but wonder, why didn't you just say,
01:29:29 8 hey, I can't read that fast; go back to the top again?
01:29:33 9 Why didn't you say that?

01:29:34 10 A. Because I wanted to get out of there. I just --
01:29:37 11 I was tired of getting yelled at. I was scared. I
01:29:40 12 just wanted to leave.

01:29:41 13 Q. Okay. But you knew this was important, correct?

01:29:44 14 A. Yes.

01:29:45 15 Q. You knew you could go to prison, didn't you?

01:29:48 16 A. Yes, ma'am.

01:29:49 17 Q. But you trusted him?

01:29:51 18 A. Yes, ma'am.

01:29:52 19 Q. Now, you've had special accommodations in school
01:29:57 20 for years and years and years?

01:29:59 21 A. Yes, ma'am.

01:30:00 22 Q. Why didn't you tell the officer, hey, I've got a
01:30:05 23 reading disability; you've got to go slower?

01:30:08 24 A. It's not something I talk about with everybody.

01:30:11 25 Q. But he says you were willing to confide in him

01:30:14 1 that you were molested when you were 11 years old.

01:30:18 2 A. He never gave me a reason not to trust him. I
01:30:22 3 didn't see any reason not to trust him. He's an FBI
01:30:24 4 agent. I didn't see a problem with it.

01:30:26 5 Q. Okay. Was there a printer in the room?

01:30:31 6 A. Yes, ma'am.

01:30:33 7 Q. Why didn't you point to the printer and say, hey,
01:30:37 8 print it out for me?

01:30:38 9 A. I didn't think anything of it at the time, to be
01:30:42 10 honest with you. I figured he would do what he needed
01:30:46 11 to do and give me a copy or whatnot. I didn't see any
01:30:49 12 importance in it, nothing.

01:30:51 13 Q. But when he didn't give you a copy, why didn't
01:30:55 14 you ask him for one?

01:30:56 15 A. I really just wanted to get out of there.

01:30:59 16 Q. I think what we're all trying to figure out is,
01:31:02 17 you're an Eagle Scout. You're a relatively smart guy.
01:31:06 18 Why did you sign something that you never said?

01:31:09 19 A. I never read it. He told me it was a letter to
01:31:13 20 the prosecutor so there's no reason to go further with
01:31:17 21 this.

01:31:18 22 Q. And you believed him?

01:31:19 23 A. Yes, ma'am.

01:31:20 24 Q. Okay. Now, your resumé has been introduced into
01:31:32 25 evidence?

01:31:32 1 A. Yes, ma'am.

01:31:33 2 Q. Did you, yourself, prepare that?

01:31:37 3 A. I did, in fact, type it up. But what we did as a
01:31:42 4 class, the senior year at the career center, we got
01:31:46 5 what's called a passport. It has our diploma in it, all
01:31:51 6 of our certifications as we passed our class we went
01:31:55 7 there for. And it has a resumé in it and letter of
01:31:58 8 recommendation from -- usually it was from our
01:32:02 9 supervisor of the school itself.

01:32:04 10 Q. Okay. Is the content on that resumé accurate?

01:32:10 11 A. Not entirely.

01:32:11 12 Q. Okay. What's not accurate?

01:32:13 13 A. It's outdated.

01:32:15 14 Q. It's outdated?

01:32:16 15 A. Yeah.

01:32:16 16 Q. But it was accurate at the time?

01:32:18 17 A. Yes, ma'am.

01:32:19 18 Q. Now, describe for the jury the drafting of that
01:32:24 19 resumé and the review of that resumé and the ultimate
01:32:28 20 production of that resumé?

01:32:30 21 A. The whole class went into what's called a
01:32:34 22 computer lab. It's just a bunch of computers that are
01:32:38 23 set up as kids go in and type up school work for class,
01:32:42 24 or if a class needs to be done on the computer, they can
01:32:46 25 do it in there. We all went down to the computer lab,

01:32:50 1 and we sat down in front of the computer. She had us
01:32:53 2 pull up this web page that we went to that creates
01:32:56 3 resumés for us. The only thing that you need to do is
01:32:59 4 just type in your personal information and things like
01:33:01 5 that. She told us she -- she specifically told us
01:33:06 6 bullet points that we had to have in there or that we
01:33:08 7 needed to have in there to make it a good resumé.

01:33:13 8 Q. And how many drafts did this resumé go through?

01:33:16 9 A. This one went through about seven.

01:33:18 10 Q. Seven?

01:33:18 11 A. Yes, ma'am.

01:33:20 12 Q. So you read it and showed it to other people or
01:33:23 13 other adults?

01:33:24 14 A. I printed it out. After each class we printed it
01:33:28 15 out and handed it to our English teacher, and then she
01:33:32 16 went through and did any corrections to it or anything
01:33:34 17 like that.

01:33:35 18 Q. And was she a special ed teacher?

01:33:38 19 A. No.

01:33:38 20 Q. She was just a normal English teacher?

01:33:40 21 A. Just a normal English teacher.

01:33:42 22 Q. Now, you worked construction for about a year?

01:33:46 23 A. Yes, ma'am.

01:33:49 24 Q. What, if any, reading did that entail?

01:33:52 25 A. None whatsoever.

01:33:56 1 Q. Now, a good deal has been made of the fact that
01:33:59 2 you are in college right now. What kind of classes do
01:34:03 3 you take in college?

01:34:05 4 A. The class that I was going for was to be an
01:34:08 5 agricultural diesel technician.

01:34:10 6 Q. What does an agricultural diesel technician do?

01:34:14 7 A. The class that I was taking was going to give me
01:34:17 8 a bachelor's degree in diesel mechanics.

01:34:21 9 Q. How much reading do you have to do?

01:34:24 10 A. Barely any, if any at all. Most of our stuff is
01:34:30 11 hands on.

01:34:30 12 Q. And when do you need to read things like
01:34:33 13 directions, what do you do?

01:34:35 14 A. The teacher -- like, we got a booklet for each
01:34:42 15 class for our tech classes, and the teacher literally
01:34:44 16 went over it word for word with us. We went through
01:34:47 17 the slide shows is mainly what they did, and they read
01:34:49 18 the slide shows to us.

01:34:53 19 Q. And when you were on the job, if you had written
01:34:57 20 directions, what would do you?

01:35:00 21 A. I would sit down probably for about a half hour
01:35:03 22 and read them, depending on the length of the
01:35:05 23 directions. And if I didn't understand them, I would
01:35:08 24 definitely take them to somebody to have them explain it
01:35:11 25 to me.

01:35:15 1 Q. What classes are you taking in college right now?

01:35:19 2 A. None.

01:35:20 3 Q. What were you taking?

01:35:22 4 A. When I left I just got through with a -- with a
01:35:28 5 psychology course that I failed miserably.

01:35:31 6 Q. Why did you fail?

01:35:33 7 A. This happened. I was very stressed. It involved
01:35:38 8 quite a bit of reading, and I just couldn't handle it.

01:35:41 9 Q. Why did you enroll in it in the first place?

01:35:44 10 A. I didn't realize I had to take the class. I
01:35:47 11 thought we'd be doing hands on entirely.

01:35:52 12 THE COURT: I couldn't hear your answer.

01:35:54 13 A. I didn't realize we had to take the course. So I
01:35:57 14 thought it was going to be all hands on entirely. I
01:35:59 15 didn't realize it was going to be a course for that.

01:36:03 16 Q. So your guidance counselor enrolled you?

01:36:06 17 A. Yes, he enrolled me. We did it over the phone.
01:36:08 18 At the time I do believe I was out in -- I was in the
01:36:11 19 southern part of Ohio, I do believe, when I called him.
01:36:14 20 I was in Mississippi. And we discussed it.

01:36:17 21 Q. Were you taking any other classes?

01:36:20 22 A. I took an Excel class for management.

01:36:25 23 Q. Any English classes, any other classes?

01:36:28 24 A. Basic English class.

01:36:31 25 Q. How did you do in that?

01:36:33 1 A. I failed it.

01:36:33 2 Q. Why?

01:36:34 3 A. I didn't have the accommodations that I needed,
01:36:39 4 and I didn't understand it.

01:36:40 5 Q. Isn't the institution required -- if you know,
01:36:43 6 isn't the institution required by law to provide special
01:36:46 7 accommodations for you?

01:36:48 8 A. Yes, ma'am.

01:36:49 9 Q. Did you ask for them?

01:36:50 10 A. At the time I didn't realize, like, how to go
01:36:53 11 about getting them. By the time I realized that I had
01:36:56 12 them, it was my -- only my second session there, and
01:36:59 13 then I took it, I didn't realize they had them until
01:37:02 14 after the class was half over, and my grades were too
01:37:06 15 far behind to get back up.

01:37:17 16 Q. Final set of questions. I want to talk about
01:37:19 17 these 30 or so images and four videos that were found on
01:37:26 18 your computer. Other than the two deleted images that
01:37:37 19 you told the special agent about, when did you learn
01:37:41 20 that these images were on your computer?

01:37:44 21 A. Not until they arrested me.

01:37:50 22 Q. And what was your initial reaction?

01:37:52 23 A. I -- when they arrested me, I freaked out. I
01:37:56 24 didn't know what was going on. I had no idea, nothing.

01:37:59 25 Q. Did you ever open any of these images?

01:38:02 1 A. No, ma'am.

01:38:02 2 Q. Did you ever double click them?

01:38:04 3 A. No, ma'am.

01:38:05 4 Q. Did you ever file them?

01:38:06 5 A. No, ma'am.

01:38:06 6 Q. Did you ever categorize them?

01:38:08 7 A. No, ma'am.

01:38:09 8 Q. Did you ever give them to anyone?

01:38:11 9 A. Not that I know of.

01:38:12 10 Q. All right. Now, when again did you move into
01:38:17 11 your apartment?

01:38:18 12 A. At the end of April.

01:38:21 13 Q. And so you were there from -- you were there all
01:38:29 14 during the month of May?

01:38:30 15 A. Yes, ma'am.

01:38:31 16 Q. And all during the month of June?

01:38:33 17 A. Yes, ma'am.

01:38:34 18 Q. All right. Were you working at all at that time?

01:38:39 19 A. During May -- during May I was not. But at the
01:38:44 20 middle of June I started working.

01:38:47 21 Q. And you were going to school?

01:38:49 22 A. Yes, ma'am.

01:38:49 23 Q. And were you going home?

01:38:51 24 A. On the weekends, yes, ma'am.

01:38:54 25 Q. And where, if you know, was Ian during this time?

01:38:58 1 A. At home. He worked also at the apartment, I
01:39:02 2 mean. But he went to school also. He went home also on
01:39:05 3 the weekends.

01:39:07 4 MS. KELLEY: All right. Thank you. No
01:39:08 5 further questions.

01:39:11 6 Mr. Secor, would you like a moment or like
01:39:14 7 to take a break -- Mr. Crawford?

01:39:27 8 - - -

01:39:27 9 ALEX COOK, CROSS-EXAMINATION

01:39:28 10 BY MR. CRAWFORD:

01:39:28 11 Q. Mr. Cook, you indicated that you moved into your
01:39:30 12 Knollwood apartment at the end of April, 2010?

01:39:35 13 A. Yes, sir.

01:39:37 14 Q. And you had a roommate, Mr. Douglas?

01:39:40 15 A. Yes, sir.

01:39:40 16 Q. And when did he move in with you?

01:39:42 17 A. At the same time.

01:39:44 18 Q. End of April of 2010 -- yes, 2010?

01:39:48 19 A. Yes, sir.

01:39:49 20 Q. Any other roommates?

01:39:51 21 A. No, sir.

01:39:53 22 Q. Okay. And you indicated that you used LimeWire
01:39:57 23 on your computer?

01:39:58 24 A. Yes, sir.

01:39:58 25 Q. You used it to download music?

01:40:01 1 A. Yes, sir.

01:40:02 2 Q. Adult pornography?

01:40:03 3 A. Yes, sir.

01:40:04 4 Q. And did you use it to download child pornography?

01:40:06 5 A. No, sir.

01:40:08 6 Q. And how often would you download music using

01:40:11 7 LimeWire?

01:40:12 8 A. Once, twice a week.

01:40:14 9 Q. And when you downloaded that music, would you
01:40:17 10 then listen to it on occasion after you downloaded it?

01:40:20 11 A. Yes, sir.

01:40:21 12 Q. And one of the ways that you can -- at least one
01:40:24 13 of the ways you can listen to music on LimeWire is
01:40:27 14 select -- click on LimeWire, select the music file, and
01:40:31 15 play?

01:40:31 16 A. I don't know. I always copied it from there
01:40:33 17 into my music folder, just drag and drop is what I
01:40:37 18 always did.

01:40:38 19 Q. You searched for music on LimeWire once or twice
01:40:42 20 a week?

01:40:43 21 A. Yes, sir.

01:40:43 22 Q. And to do that you would open the LimeWire
01:40:45 23 program, true?

01:40:46 24 A. Yes, sir.

01:40:47 25 Q. Now, when agents came to your apartment to serve

01:40:51 1 a search warrant, it's true that you told Special Agent
01:40:54 2 Pape that there had been child pornography on your
01:40:56 3 computer?

01:40:57 4 A. No, sir. I told him there were two images that
01:41:00 5 may be; I was not sure.

01:41:02 6 Q. But you had seen two images that you thought
01:41:05 7 might be child pornography on your computer?

01:41:06 8 A. Yes, sir.

01:41:12 9 Q. And you accompanied Agent Pape and Schulte to the
01:41:16 10 FBI Lima office?

01:41:17 11 A. Yes, sir.

01:41:17 12 Q. And you made a statement there?

01:41:19 13 A. Yes, sir.

01:41:22 14 Q. And that statement was reduced to writing at some
01:41:26 15 point?

01:41:26 16 A. I didn't actually make a statement, but yes, sir.

01:41:31 17 Q. But Special Agent Pape interviewed you?

01:41:33 18 A. Yes.

01:41:34 19 Q. And you admitted having child pornography on your
01:41:37 20 computer in that statement?

01:41:38 21 A. No, sir.

01:41:40 22 Q. But you indicated that you started viewing child
01:41:43 23 pornography about three years prior to that?

01:41:44 24 A. No, sir.

01:41:51 25 Q. On direct examination did you indicate that you

01:41:53 1 did view adult pornography at some point in time prior
01:41:56 2 to the search warrant?

01:41:58 3 A. Yes, sir.

01:41:59 4 Q. And approximately how old were you when that
01:42:02 5 happened?

01:42:02 6 A. Adult pornography was around 17.

01:42:05 7 Q. You indicated that after you left home and
01:42:07 8 graduated from high school you started viewing child
01:42:10 9 pornography?

01:42:10 10 A. No, sir.

01:42:12 11 Q. Did you indicate that you -- first viewed child
01:42:17 12 pornography out of curiosity?

01:42:19 13 A. No, sir.

01:42:19 14 Q. You relayed a story to Special Agent Pape about
01:42:23 15 being fondled at Boy Scout camp?

01:42:26 16 A. No, sir.

01:42:31 17 Q. You indicated to Special Agent Pape that you
01:42:35 18 downloaded child pornography from LimeWire?

01:42:37 19 A. No, sir.

01:42:38 20 Q. Did you tell him that you used the search term
01:42:41 21 "child porn" to search for images?

01:42:44 22 A. No, sir.

01:42:48 23 Q. Did you tell him that you found one particular
01:42:50 24 girl that reminded you of your ex-fiancée?

01:42:53 25 A. No, sir.

01:43:01 1 Q. Did you indicate to him that you had downloaded
01:43:03 2 pictures that showed someone resembling your ex-fiancée
01:43:08 3 that was clothed and showed the age progression as she
01:43:14 4 grew older?

01:43:14 5 A. No, sir.

01:43:15 6 Q. Did you indicate you were aroused most by views
01:43:17 7 of children naked in the low teen range?

01:43:20 8 A. No, sir.

01:43:21 9 Q. Did you indicate that you had viewed child
01:43:24 10 pornography approximately once per week?

01:43:26 11 A. No, sir.

01:43:26 12 Q. Did you indicate that you spoke to your church
01:43:35 13 leader about viewing pornography?

01:43:37 14 A. Viewing what?

01:43:38 15 Q. Pornography?

01:43:39 16 A. After I got arrested, I said.

01:43:43 17 Q. Let me ask the question again. Did you indicate
01:43:45 18 to Special Agent Pape that you had discussed with your
01:43:48 19 church leader that you had been viewing pornography?

01:43:51 20 A. No. I'm sorry.

01:43:56 21 Q. Now, you have attended church in the past in Knox
01:44:00 22 County; is that true?

01:44:01 23 A. Yes, sir.

01:44:03 24 Q. You indicated to Special Agent Pape that you had
01:44:06 25 taught Sunday school?

01:44:07 1 A. No, sir.

01:44:08 2 Q. You indicated to Special Agent Pape you were a
01:44:12 3 scout leader?

01:44:13 4 A. No, sir.

01:44:25 5 Q. Now, approximately eight months after the search
01:44:30 6 warrant you met with Dr. Graves; is that true?

01:44:32 7 A. Yes, sir.

01:44:33 8 Q. And you told Dr. Graves that you saw child
01:44:35 9 pornography on your computer; is that true?

01:44:37 10 A. I saw two images that I thought might be.

01:44:40 11 Q. Well, you've described these images to him as a
01:44:44 12 girl that's 14 or 15 years old with small breasts and no
01:44:49 13 body hair. Is that true?

01:44:49 14 A. No, sir.

01:44:50 15 Q. You did not tell Dr. Graves that?

01:44:53 16 A. I didn't tell him ages because I didn't know
01:44:55 17 ages.

01:44:55 18 Q. But you made the statement to him that this image
01:44:58 19 was of a girl that appeared 14 to 15 years old with
01:45:01 20 small breasts and no body hair?

01:45:04 21 A. Yes, sir.

01:45:06 22 Q. You told Dr. Graves that you downloaded adult
01:45:10 23 pornography on LimeWire?

01:45:10 24 A. Yes, sir.

01:45:11 25 Q. You told Dr. Graves that you watched X rated

01:45:15 1 videos on the internet; is that true?

01:45:17 2 A. Yes, sir.

01:45:18 3 Q. You spoke to Dr. Graves about your roommate; is
01:45:20 4 that correct?

01:45:20 5 A. Yes, sir.

01:45:21 6 Q. And your roommate was Ian Douglas?

01:45:23 7 A. Yes, sir.

01:45:24 8 Q. You told Dr. Graves that Ian Douglas was a jerk,
01:45:28 9 didn't you?

01:45:28 10 A. Yes, sir.

01:45:29 11 Q. You said that he stuck with you with a \$350 cable
01:45:33 12 bill?

01:45:33 13 A. Yes, sir.

01:45:38 14 Q. You told him that there were other bills that you
01:45:41 15 were forced to pay because Mr. Douglas swore that he
01:45:44 16 paid them?

01:45:44 17 A. Yes, sir.

01:45:45 18 Q. You said that he had no job -- that Mr. Douglas
01:45:48 19 had no job, that he was lazy, yet Mr. Douglas called you
01:45:53 20 lazy?

01:45:53 21 A. Yes, sir.

01:46:02 22 Q. You also told Mr. Graves that you were upset with
01:46:04 23 the FBI; is that true?

01:46:06 24 A. Yes, sir.

01:46:07 25 Q. You told Mr. Graves that the FBI agents lied to

01:46:10 1 you?

01:46:10 2 A. Yes, sir.

01:46:10 3 Q. You told Dr. Graves that this whole situation was
01:46:15 4 ridiculous, uncalled for, unfair, and one-sided; is that
01:46:19 5 true?

01:46:19 6 A. Yes, sir.

01:46:20 7 Q. You told Dr. Graves that the FBI -- you trusted
01:46:24 8 the FBI not to mess me over and they all lied to me. Is
01:46:26 9 that true?

01:46:27 10 A. Yes, sir.

01:46:27 11 Q. You said you were helpful in any way you could
01:46:30 12 be; is that true?

01:46:31 13 A. Yes, sir.

01:46:31 14 Q. Because you had nothing to hide?

01:46:33 15 A. Yes, sir.

01:46:34 16 Q. You said you called them back to your apartment
01:46:37 17 and signed the consent form for them to search your
01:46:41 18 vehicle?

01:46:41 19 A. Yes, sir.

01:46:42 20 Q. Because you were trying to be helpful. Is that
01:46:45 21 true?

01:46:45 22 A. Yes, sir.

01:46:46 23 Q. You told Dr. Graves that there was an FBI agent
01:46:51 24 that yelled at you for three or four hours calling you
01:46:53 25 an idiot; is that true?

01:46:55 1 A. Yes, sir.

01:46:55 2 Q. And that you were signing a letter to the
01:46:58 3 prosecutors telling them not to go forward with the
01:47:01 4 case. Is that true?

01:47:02 5 A. Yes, sir.

01:47:05 6 MR. CRAWFORD: Just one moment, Your Honor.

01:47:26 7 BY MR. CRAWFORD:

01:47:26 8 Q. Mr. Cook, you indicated that you'd first learned
01:47:29 9 about images on your computer at the time you'd been
01:47:31 10 arrested?

01:47:32 11 A. Yes, sir.

01:47:33 12 Q. Were you aware that there were 30-plus images of
01:47:35 13 child pornography on your computer prior to being
01:47:37 14 arrested?

01:47:38 15 A. No, sir.

01:47:38 16 Q. Were you aware of any movies depicting child
01:47:41 17 pornography on your computer prior to being arrested?

01:47:43 18 A. No, sir.

01:47:43 19 Q. You were arrested sometime in December of 2010?

01:47:47 20 A. I don't believe it was December.

01:47:48 21 Q. Do you recall when it was?

01:47:50 22 A. October, November, I think, or September. I
01:47:55 23 can't remember exactly when it was. It was roughly ten
01:47:59 24 months from -- prior to this. Ten months. I don't
01:48:04 25 know. I'm not good with dates.

01:48:06 1 MR. CRAWFORD: No further questions.

01:48:09 2 THE COURT: Okay.

01:48:10 3 MS. KELLEY: Very briefly.

01:48:11 4 - - -

01:48:11 5 ALEX COOK, REDIRECT EXAMINATION

01:48:12 6 BY MS. KELLEY:

01:48:12 7 Q. Those two images that you told the Special Agent
01:48:21 8 about, what did you do with those two images?

01:48:25 9 A. Put them in the recycling bin on my computer.

01:48:30 10 Q. What is the recycle bin?

01:48:31 11 A. To get rid of unwanted documents.

01:48:33 12 Q. Slowly.

01:48:35 13 A. Sorry. To get rid of unwanted documents.

01:48:38 14 Q. To get rid of unwanted documents. You didn't
01:48:40 15 want them?

01:48:41 16 A. No, ma'am.

01:48:41 17 Q. Do you know how they got on your computer?

01:48:44 18 A. I have no idea.

01:48:45 19 Q. And to the best of your knowledge, those were the
01:48:47 20 only images of child pornography on your computer?

01:48:53 21 A. Yes, ma'am.

01:48:54 22 Q. All right. And are you mad at Ian because he
01:49:02 23 stiffed you with those bills?

01:49:04 24 A. No, ma'am.

01:49:05 25 Q. Is that the reason why we've been discussing him

01:49:08 1 at this trial?

01:49:09 2 A. No, ma'am.

01:49:10 3 MS. KELLEY: No further questions. Thank
01:49:12 4 you.

01:49:12 5 MR. CRAWFORD: No questions.

01:49:13 6 THE COURT: You may step down. Why don't we
01:49:21 7 take a break.

01:49:22 8 All right. Thank you.

01:49:27 9 Counsel, why don't you come up for a moment.

01:49:33 10 (Recess taken.)

02:50:07 11 (The following discussion was had in
02:50:08 12 chambers; the jury is not present.)

02:50:13 13 THE COURT: In the instruction on
02:50:15 14 credibility of witnesses, I intend to instruct the
02:50:18 15 following: You may also consider the failure of the FBI
02:50:23 16 to have recorded its interview with the defendant in
02:50:26 17 assessing the credibility of the testimony about that
02:50:28 18 interview and the defendant's statements against the
02:50:31 19 agent's.

02:50:32 20 Twice in my career I'm faced with the fact
02:50:35 21 that had the Bureau recorded the conversation, we
02:50:38 22 wouldn't be here.

02:50:41 23 I spoke to Mike Rolf at the time when Fred
02:50:44 24 Henning was convicted. I've said to agents otherwise.
02:50:47 25 I find it a shabby and unjustified practice. Recording

02:50:50 1 is ubiquitous. They videotape with TPD.

02:50:55 2 MR. SECOR: You're preaching to the choir.

02:50:57 3 But, that having been said, this is a procedural thing

02:51:00 4 that the government -- when I say "the government," I

02:51:02 5 mean my office -- has no control over.

02:51:06 6 THE COURT: I understand that. Somebody has

02:51:10 7 to tell the Bureau, enough is enough. This kid is

02:51:12 8 looking at 15 years, if I understand correctly. A 20

02:51:16 9 year old Eagle Scout. I don't know whether he's telling

02:51:19 10 the truth. But I think this matters. And I think she

02:51:22 11 should be able to argue it. If you want to ask the

02:51:24 12 agent on the stand, why don't you do it, go right ahead.

02:51:28 13 It's outside the scope of the defense case in chief.

02:51:31 14 I'm dropping this bombshell on you. But I'm sitting

02:51:34 15 here listening to that kid and wondering, you know,

02:51:37 16 maybe he's telling the truth. Implausible as it seems,

02:51:40 17 incredible as it is; nonetheless, we wouldn't be here.

02:51:48 18 And a highly respected lawyer in this community would

02:51:52 19 not have ever been convicted, or he may well have been

02:51:54 20 convicted; the case would never have gone to trial.

02:51:56 21 It's not necessary for us and the jurors and everybody

02:51:58 22 else to take the time and money when the Bureau, as far

02:52:01 23 as I'm concerned, has absolutely no reason not to do it.

02:52:05 24 It gives the Bureau an edge. These guys come in here

02:52:07 25 with their badge, their experience, their professional

02:52:12 1 demeanor in testifying, and it's impossible not to
02:52:15 2 believe them. It's impossible. It really is.

02:52:18 3 MR. SECOR: So you're doing this in order to
02:52:20 4 get them to change their policies?

02:52:22 5 THE COURT: No, I'm doing it because it's
02:52:24 6 fundamentally unfair. It is fundamentally unfair. They
02:52:27 7 do it deliberately because they know it gives them an
02:52:30 8 edge. And that's not right. It's not the way the
02:52:33 9 government should function. It recorded thousands of
02:52:36 10 hours, hundreds of hours of that Darren Griffin, the
02:52:41 11 undercover agent, the plant in the terrorism case.
02:52:44 12 Hundreds of hours. Peep hole cameras, gym bags; they
02:52:49 13 can do it. There's no excuse not to. Highway patrol
02:52:53 14 does it. I'd be willing to bet every major police
02:52:57 15 department in this state does it. There's no excuse.

02:53:00 16 I'm yelling at you, Tom; I'm sorry, but I'm
02:53:04 17 really upset. This is 15 years of the kid's life. He
02:53:07 18 may deserve it. The stuff we saw yesterday is
02:53:10 19 appalling. He deserves a stiff sentence if he did it.
02:53:14 20 And we could know one way or another what the truth was
02:53:16 21 about what happened in that closed interrogation room.
02:53:18 22 I don't like thinking that an FBI agent might lie, but
02:53:24 23 there's a sure and certain way I would know whether
02:53:28 24 that's true or not. This case wouldn't be here if they
02:53:30 25 had a recording; she would have pled, or you wouldn't

02:53:32 1 have indicted. End of discussion.

02:53:36 2 MR. SECOR: Well, what we would have done is
02:53:38 3 not material to our discussion right now because we
02:53:41 4 would have, without his statement, we would have gone
02:53:45 5 forward with this case. But, you know, at this point of
02:53:51 6 the proceeding --

02:53:54 7 THE COURT: I understand. It just occurred
02:53:55 8 to me right now after I saw his testimony, when I heard
02:53:58 9 what he said. I agree that it is very difficult to
02:54:02 10 credit; no doubt about that at all. On the other hand,
02:54:07 11 as she's pointed out, a kid that does apparently have
02:54:11 12 some bona fide reading disability; he said, I didn't
02:54:15 13 read it. This is what the agent told me. Okay. I
02:54:20 14 wanted to get out of there. And we all know and the
02:54:24 15 last five years have shown us there are plenty of false
02:54:28 16 confessions. People who are totally innocent. Has it
02:54:32 17 happened in this case? Who knows. That's for the jury
02:54:35 18 to decide. But I am sick and tired of the Bureau coming
02:54:38 19 in here and taking that edge. It's a violation of
02:54:42 20 fundamental due process as far as I'm concerned.

02:54:44 21 It's not the government's fault. It's not
02:54:47 22 your fault. Your hands are tied. But maybe somehow
02:54:50 23 sometime if they lose this case, and if they realize
02:54:54 24 they could have won it if they recorded, maybe next time
02:54:57 25 sometime down the road somebody will say, bring me the

02:55:00 1 recording. I may not change the policy. I may be the
02:55:05 2 first judge ever to say this. I don't really care.

02:55:08 3 MR. SECOR: Well, the policy has recently
02:55:10 4 been modified, not that that matters in this case.

02:55:14 5 THE COURT: No, it doesn't. I'm telling you
02:55:17 6 now so that at least you can get ready for the -- I know
02:55:22 7 it's short notice, but, Tom, it occurred to me when I
02:55:26 8 came back to my office. I mean, I'm sorry; it just did.
02:55:32 9 It grated me. I was tempted, quite candidly, to ask,
02:55:37 10 but then when Elizabeth didn't say anything about it, I
02:55:41 11 figured, no, keep my thumb off the scales, and basically
02:55:45 12 get into it in front of the jury with the agent. I
02:55:50 13 didn't. Okay. That's how strongly I feel about this.
02:55:55 14 It just is not fair. I have too great a respect for the
02:55:58 15 Bureau and the work that it does day in and day out to
02:56:01 16 accept it.

02:56:02 17 MR. SECOR: Getting into it with the agent
02:56:04 18 solves nothing either.

02:56:06 19 THE COURT: Tom, I understand. That's why I
02:56:08 20 didn't do it. I paused for a moment and said, you may
02:56:11 21 step down. At that moment I thought about saying, well,
02:56:15 22 agent, you didn't record it, did you? No. Why not?
02:56:20 23 Bureau policy. Does the Lima PD record? Does the Allen
02:56:26 24 County sheriff? Do you know whether the Toledo Police
02:56:29 25 Department records? The Ohio State Patrol when they

02:56:31 1 have a traffic stop? I said, nope, that's not fair.

02:56:40 2 So anyway, I wanted to let you know. And I
02:56:44 3 note your objection.

02:56:47 4 I assume you want that instruction. I
02:56:49 5 should ask you that.

02:56:51 6 MS. KELLEY: Yes. No objection. Thank you.

02:56:55 7 THE COURT: I would assume not. If the
02:57:01 8 Bureau is mad at me, they're mad at me. I'm mad at them
02:57:06 9 about their policy.

02:57:09 10 Your witness is here?

02:57:10 11 MS. KELLEY: Yes, he is.

02:57:11 12 THE COURT: How long is he likely to be, an
02:57:13 13 hour?

02:57:14 14 MS. KELLEY: I'm pretty short. You've
02:57:16 15 probably discovered by now.

03:28:54 16 (Lunch recess taken.)

03:31:47 17 (The jury enters the courtroom.)

03:33:14 18 THE COURT: Ms. Kelley, who is your next
03:33:16 19 witness, and what will we learn from them?

03:33:19 20 MS. KELLEY: Our next witness is Mark
03:33:21 21 Vassel, who is a computer forensics expert. He
03:33:24 22 conducted a thorough examination of Alex's computer. He
03:33:27 23 is expected to address the subject of the two deleted
03:33:31 24 files on the computer as well as to whether the 30
03:33:37 25 images and four videos were actually opened, viewed,

03:33:42 1 categorized, or filed by the defendant.

03:34:17 2 (The witness was sworn by the clerk.)

03:34:26 3 THE COURT: Have a seat, sir. Sit about
03:34:31 4 this distance from the microphone. It's easier for you
03:34:36 5 to move rather than it.

03:34:44 6 Please tell the ladies and gentlemen your
03:34:46 7 name.

03:34:46 8 THE WITNESS: My name is Mark Vassel.

03:34:49 9 THE COURT: M-a-r-c or K?

03:34:51 10 THE WITNESS: It's with a K, Judge.

03:34:53 11 THE COURT: The last name?

03:34:54 12 THE WITNESS: Vassel, V-a-s-s-e-l.

03:34:58 13 THE COURT: Maybe sit back an inch or so.

03:35:01 14 What is your community of residence? What town do you
03:35:04 15 live in?

03:35:04 16 THE WITNESS: I live in Olmstead Falls,
03:35:06 17 Ohio.

03:35:07 18 THE COURT: Do you have an occupation or
03:35:08 19 profession?

03:35:09 20 THE WITNESS: I do.

03:35:09 21 THE COURT: What is that?

03:35:10 22 THE WITNESS: I'm a computer forensic
03:35:12 23 examiner.

03:35:13 24 THE COURT: And what is a computer forensic
03:35:15 25 examiner?

03:35:16 1 THE WITNESS: Basically what a computer
03:35:18 2 forensic examiner is, the geek without the pocket
03:35:22 3 protector. We look at computer hard drives and process
03:35:27 4 them and pull potential evidence off them.

03:35:31 5 THE COURT: Do you work for a company or are
03:35:33 6 you self-employed? Who's your employer?

03:35:36 7 THE WITNESS: Actually I was a police
03:35:37 8 officer for 13 years and then got a little tired of
03:35:42 9 working weekends and holidays, so I started my own
03:35:44 10 company.

03:35:46 11 THE COURT: And if you have your own
03:35:47 12 company, you're probably still working weekends and
03:35:50 13 holidays.

03:35:51 14 THE WITNESS: Unfortunately I didn't know
03:35:52 15 that at the time, Judge.

03:35:55 16 THE COURT: What police department were you
03:35:56 17 with?

03:35:57 18 THE WITNESS: I was with the Olmstead
03:35:58 19 Township Police Department.

03:36:01 20 THE COURT: And what sort of training or how
03:36:04 21 did you become able to do what you do now?

03:36:07 22 THE WITNESS: Sure. What I -- I started as
03:36:10 23 a police officer. In the State of Ohio there's a
03:36:13 24 training academy called OPOTA, Ohio Peace Officer's
03:36:18 25 Training Academy. Went to my chief of police one day

03:36:21 1 and said, you know what, this is going to be the future
03:36:24 2 of crimes. So I started --

03:36:28 3 THE COURT: I don't mind if you're turned
03:36:31 4 away.

03:36:31 5 THE WITNESS: -- the future of crimes. So
03:36:33 6 the chief sent me to the basic computer forensic classes
03:36:36 7 they hold. I'm like, you know what, this is kind of
03:36:39 8 cool. I went, took the intermediate and advanced
03:36:43 9 computer crimes investigations, then went through the
03:36:49 10 National White Collar Crime Center for advanced computer
03:36:52 11 forensic examinations through Guidant Software. The
03:37:00 12 program that we use, it's called EnCase, E-N-C-A-S-E.

03:37:05 13 What that is, it's a program that we use that allows --

03:37:09 14 THE COURT: I'm sorry?

03:37:11 15 THE WITNESS: It's going to be E-N-C-A-S-E.

03:37:17 16 THE COURT: EnCase?

03:37:19 17 THE WITNESS: That's manufactured by a
03:37:21 18 company called Guidant Software. So I went through
03:37:24 19 training through the company, the manufacturers of the
03:37:27 20 software that we used, looked through the computer hard
03:37:30 21 drive and gathering the data and gathering the potential
03:37:34 22 evidence in the case. So I went through that, taught
03:37:40 23 some computer forensic classes, gave some speeches.

03:37:46 24 THE COURT: Okay.

03:37:46 25 MS. KELLEY: Your Honor, based on the

03:37:47 1 foregoing we would ask permission to qualify Mr. Vassel
03:37:52 2 as an expert.

03:37:53 3 THE COURT: Any objection?

03:37:55 4 MR. SECOR: No, Your Honor.

03:37:55 5 THE COURT: Ladies and gentlemen, as
03:37:56 6 previously indicated, the "expert" is sort of a
03:37:59 7 shorthand term under the Rules of Evidence which permit
03:38:03 8 somebody to give opinion testimony, which normally is
03:38:07 9 not permitted. Normally I can't hear somebody say,
03:38:10 10 well, in my opinion X, Y, Z. People usually have to
03:38:15 11 testify just to the facts and so forth. But when a
03:38:18 12 person is qualified, as this witness is, or as earlier
03:38:23 13 witnesses have been, to talk about something that
03:38:26 14 ordinary people like ourselves would have difficulty
03:38:29 15 comprehending, and also to tell us in greater detail
03:38:34 16 about such matters, then the law permits what we in a
03:38:39 17 shorthand way call expert testimony. And you should
03:38:42 18 consider the credibility and weight to be given to his
03:38:46 19 testimony just like you will all the other witnesses, as
03:38:50 20 I told you initially and as I will tell you again when I
03:38:53 21 give you the charge.

03:38:54 22 Go ahead, Ms. Kelley.

03:38:56 23 MS. KELLEY: Thank you, Your Honor.

03:38:57 24 - - -

03:38:57 25 MARK VASSEL, DIRECT EXAMINATION

03:38:58 1 BY MS. KELLEY:

03:38:58 2 Q. Good afternoon, Mark.

03:38:59 3 A. Good afternoon.

03:39:00 4 Q. You told the jury earlier that you founded your
03:39:04 5 own company, correct?

03:39:06 6 A. That's correct.

03:39:06 7 Q. And as the principal in your own company, do you
03:39:12 8 testify only for the defense?

03:39:14 9 A. No. In fact, actually a couple weeks ago I got a
03:39:18 10 subpoena from an Ottawa County prosecutor.

03:39:21 11 Q. Okay. So you testify for both the prosecution
03:39:24 12 and the defense?

03:39:25 13 A. Right.

03:39:27 14 Q. And to clarify, are you being compensated for
03:39:30 15 your time today?

03:39:31 16 A. Yes, I am.

03:39:33 17 Q. All right. And does your fee in any way
03:39:37 18 influence the direction of your testimony?

03:39:41 19 A. No, it doesn't.

03:39:44 20 Q. Now, have you had occasion to examine a hard
03:39:50 21 drive from Alex Cook's computer?

03:39:53 22 A. Yes, I did.

03:39:54 23 Q. And how long did you spend examining that hard
03:39:58 24 drive?

03:39:59 25 A. I spent a good solid day there looking at that

03:40:03 1 hard drive, gathering some reports and taking the
03:40:07 2 reports back.

03:40:08 3 Q. All right. And based upon that approximately
03:40:13 4 eight-hour examination, have you reached some
03:40:16 5 conclusions as to that hard drive?

03:40:20 6 A. Yes, I have.

03:40:21 7 Q. And the objects on it?

03:40:23 8 A. Yes.

03:40:23 9 Q. All right. The first issue I want to discuss
03:40:28 10 with you is LimeWire. Were you able to tell during the
03:40:34 11 course of your examination when the LimeWire was
03:40:38 12 installed?

03:40:38 13 A. Yes, I was.

03:40:40 14 Q. And what was the date of the LimeWire's
03:40:42 15 installation?

03:40:44 16 A. I believe it was July 31st.

03:40:49 17 Q. Of what year?

03:40:51 18 A. Of 2010.

03:40:54 19 Q. Would that be 2009?

03:40:56 20 A. I'm sorry, that would be 2009.

03:40:59 21 Q. July of 2009. And is LimeWire still in
03:41:02 22 existence?

03:41:03 23 A. Actually, recently it was shut down.

03:41:06 24 Q. All right. Now, do you recall the dates in
03:41:12 25 question when these 34 images and videos appeared on

03:41:21 1 Alex's hard drive?

03:41:22 2 A. I know I created a report. Off the top of my
03:41:27 3 head, I can't remember.

03:41:28 4 Q. All right. Would it be correct to say that they
03:41:32 5 were created between May -- the first week of May and
03:41:37 6 June 22 of 2011?

03:41:40 7 A. I believe that those would be the dates, yes.

03:41:45 8 Q. And the LimeWire itself was installed July of
03:41:47 9 '09?

03:41:48 10 A. That's correct.

03:41:49 11 Q. All right. Now, there has been a good deal of
03:41:54 12 discussion during the course of this trial about two
03:41:59 13 deleted child pornography files on Alex's hard drive.
03:42:05 14 Do you recall finding the titles of those two images?

03:42:12 15 A. Yes, I did.

03:42:13 16 Q. And what did you discover about those two images?

03:42:18 17 A. The images themselves, when you delete a file,
03:42:22 18 it's like --

03:42:23 19 Q. I'm going to interrupt you. Were those files
03:42:26 20 deleted?

03:42:27 21 A. They were in the recycle bin, yes.

03:42:30 22 Q. They were in the recycle bin, which means delete?

03:42:33 23 A. You'd have to empty the recycle and restore it,
03:42:37 24 then it would no longer be in the recycle bin.

03:42:40 25 Q. If a person doesn't want to see something, they

03:42:43 1 put it in the recycle bin?

03:42:44 2 A. Yes.

03:42:46 3 Q. Continue.

03:42:47 4 A. Recycle is like your waste paper basket at home.

03:42:50 5 You read the morning newspaper; you're done with it.

03:42:54 6 Crumple it up and throw it in the -- the recycle bin, I

03:42:58 7 guess, or regular garbage can.

03:43:01 8 Q. For approximately how many years have you been
03:43:03 9 doing computer forensic analysis as it pertains to child
03:43:08 10 pornography?

03:43:08 11 A. About 15 now, 15 years.

03:43:11 12 Q. Has it been your experience that people
03:43:14 13 interested in child pornography typically put files in
03:43:18 14 the recycle bin?

03:43:20 15 A. No. Quite the contrary.

03:43:22 16 Q. What do they usually do with them?

03:43:24 17 A. Based on my experience and what I've seen in
03:43:28 18 doing these type of cases is they like to have instant
03:43:31 19 access to these files. A pedophile wants to create
03:43:36 20 folders; one folder may say boys, another folder girls,
03:43:40 21 and they put it either on their desktop or My Documents.
03:43:44 22 So what they do is they create folders, categorize the
03:43:47 23 images, organize the images.

03:43:49 24 Q. And you did not see that with these two deleted
03:43:52 25 files?

03:43:52 1 A. No.

03:43:55 2 Q. During the course of your examination, did you
03:44:00 3 learn if any search terms had been put into the computer
03:44:05 4 which would generate child pornography?

03:44:08 5 A. The search terms that I did find on the computer
03:44:11 6 related to music. I saw nothing indicative of someone
03:44:17 7 actively searching child pornography. When I say
03:44:20 8 indicative, as far as the key words, it's like typing in
03:44:24 9 Lolita, PTHC, and having the screen populate.

03:44:28 10 Q. So you're talking about an internet search right
03:44:30 11 now, correct?

03:44:31 12 A. Both the internet and I did an examination for
03:44:33 13 LimeWire, looking for fragments.

03:44:36 14 Q. So we have internet searches and we have LimeWire
03:44:38 15 searches. Let's first clarify the internet searches.
03:44:42 16 Did you find any search terms indicative of a hunt for
03:44:47 17 child pornography?

03:44:49 18 A. On the internet searches, no.

03:44:52 19 Q. How about LimeWire?

03:44:53 20 A. LimeWire I had to look for fragments, and I saw
03:44:56 21 nothing, no key words in LimeWire that would be
03:44:59 22 indicative of child porn.

03:45:03 23 Q. Let's zero in on the 34 images which were the
03:45:09 24 subject of this trial. Do you recall finding the
03:45:17 25 headings for those 34 images?

03:45:21 1 A. I found the file names, yes.

03:45:28 2 Q. And did you -- strike that.

03:45:31 3 How did you go about finding those file names?

03:45:34 4 A. As I mentioned earlier, I used this program
03:45:36 5 EnCase. In going through the government's 302 and the
03:45:44 6 computer, I made a comparison.

03:45:48 7 Q. Now, yesterday when the government's expert,
03:45:52 8 Detective Morford, testified, he showed us a screen of
03:45:57 9 those 34 titles.

03:45:58 10 A. Okay.

03:45:59 11 Q. And the accessed time was virtually the same time
03:46:06 12 as the created time. What, in your expert opinion, does
03:46:11 13 that mean, if anything?

03:46:13 14 A. Well, let's talk about the created time and the
03:46:17 15 last accessed time. The created time on the computer is
03:46:20 16 when that file comes from the internet. When it's being
03:46:24 17 downloaded from the internet it's a series --

03:46:27 18 Q. I'm going to interrupt you. How does this stuff
03:46:31 19 just come from the internet without you asking for it?

03:46:33 20 A. Well, it can be either pop-ups, there's numerous
03:46:37 21 amounts of ways that these can come from the internet.
03:46:40 22 You can do downloads from LimeWire or peer-to-peer
03:46:46 23 programs.

03:46:46 24 Q. The bottom line is, it's coming?

03:46:48 25 A. It's coming. And it's coming in as literally

03:46:51 1 ones and zeros. The information is being downloaded to
03:46:54 2 the computer. The computer then populates and creates a
03:46:58 3 file name from these ones and zeros. It becomes stored
03:47:03 4 on your computer.

03:47:04 5 When it's first stored on your computer, it's
03:47:07 6 called the created date. So that's the date it's
03:47:10 7 created on your computer hard drive. So that's the date
03:47:15 8 in which it was first stored.

03:47:17 9 Q. So that gets a time that's indicated on the
03:47:19 10 screen?

03:47:20 11 A. Right. That's time stamped.

03:47:23 12 Q. That's basically the inbox?

03:47:25 13 A. Exactly.

03:47:26 14 Q. Then why is the accessed time on virtually all of
03:47:31 15 those documents' last access -- that is to say, why is
03:47:36 16 that virtually the same?

03:47:37 17 A. Let's talk about last access, and then make a
03:47:40 18 comparison. Last access is when you take that mouse and
03:47:44 19 you move the pointer on the screen, and you double click
03:47:47 20 on that file. It's when you open up that file
03:47:52 21 physically. It's going to take you maybe four, five,
03:47:57 22 six, seven seconds to open that file. So you're going
03:48:00 23 to see a date and time stamp of when it first came on
03:48:03 24 your computer, and a date and time stamp of when the
03:48:06 25 user last opened it, viewed it, accessed it. If they're

03:48:10 1 identical, the file created date and time and the last
03:48:13 2 access date and time, down to the second, that's showing
03:48:18 3 me the file hasn't been double clicked on and opened and
03:48:21 4 viewed.

03:48:22 5 Q. So yesterday when we saw that laundry list of 34
03:48:26 6 names with the created times and the last access times
03:48:35 7 all being the same, that is to say the created is the
03:48:41 8 same time as the last access, for virtually each of
03:48:46 9 those 34 entries, what does that mean?

03:48:48 10 A. Well, that means it was on the computer but was
03:48:52 11 never opened, never viewed, never displayed.

03:48:54 12 Q. Was it ever filed?

03:48:56 13 A. I'm sorry?

03:48:57 14 Q. Ever filed?

03:48:58 15 A. No.

03:48:58 16 Q. Ever downloaded?

03:49:00 17 A. It was on the computer because that's your
03:49:02 18 created date. But when it became on your computer, it
03:49:06 19 wasn't opened.

03:49:07 20 Q. In laymen's terms, does that mean that anyone
03:49:12 21 opened it and watched that video?

03:49:14 22 A. No.

03:49:14 23 Q. Or looked at that image?

03:49:16 24 A. Not with the times being identical, no.

03:49:19 25 Q. All right. Now, we also had a discussion

03:49:23 1 yesterday about IP addresses and MAC addresses. Did you
03:49:35 2 review the discovery documents in this case?

03:49:37 3 A. Yes, I have.

03:49:38 4 Q. All right. And what --

03:49:42 5 THE COURT: If I can interrupt. Ladies and
03:49:44 6 gentlemen, as Ms. Kelley used the term "discovery
03:49:47 7 documents," and what that means is documents that were
03:49:50 8 provided to her in the course of preparing for the
03:49:54 9 defense. The, quote, "discovery" is kind of a legal
03:49:58 10 term of art.

03:49:59 11 Go ahead. I apologize for interrupting.

03:50:01 12 MS. KELLEY: No, that's fine. Thank you.

03:50:03 13 BY MS. KELLEY:

03:50:04 14 Q. Now, was this child pornography traced to an IP
03:50:13 15 address or to a MAC address?

03:50:15 16 A. The CP in this matter was traced to an IP
03:50:22 17 address.

03:50:22 18 Q. And CP is?

03:50:23 19 A. Child pornography.

03:50:25 20 Q. So the child pornography was traced to the router
03:50:28 21 address?

03:50:29 22 A. It was traced back to the router.

03:50:34 23 Q. What would have happened if the child pornography
03:50:38 24 had been traced to -- strike that.

03:50:42 25 What would have happened if law enforcement would

03:50:44 1 have looked for the MAC address?

03:50:46 2 A. Well, the MAC address is an acronym. What that
03:50:51 3 is, it's unique to that particular computer. Every
03:50:56 4 computer in this courtroom that connects to the internet
03:51:01 5 has a separate different MAC address. So it's like a
03:51:04 6 finger print of that particular computer.

03:51:06 7 Q. So in other words, through the IP address you can
03:51:10 8 determine what router, what building things are coming
03:51:17 9 from, correct?

03:51:18 10 A. That's correct.

03:51:19 11 Q. But through the MAC address you can actually
03:51:22 12 determine the actual physical computer?

03:51:24 13 A. Right. You can determine the -- kind of an
03:51:26 14 analogy here is you can determine the actual computer
03:51:30 15 and what room it's in in the house. To give an analogy
03:51:34 16 of -- you can trace it back to a house, and this will
03:51:37 17 actually tell you what computer, where to go.

03:51:42 18 Q. And there can be lots of individual MAC addresses
03:51:46 19 within an IP address, correct?

03:51:49 20 A. Right. Nowadays in homes people have more than
03:51:54 21 one computer; you have iPads that with a MAC address,
03:51:59 22 multiple laptops. My four-year-old now has his own
03:52:03 23 iPad, and that has a separate MAC address.

03:52:08 24 Q. So the IP address in this case was traced to Alex
03:52:14 25 Cook, correct?

03:52:15 1 A. It was traced to the residence.

03:52:17 2 Q. To the residence of Alex Cook?

03:52:19 3 A. That's correct.

03:52:20 4 Q. And simply because an IP address is issued to an
03:52:26 5 individual, does that indicate identity?

03:52:30 6 A. What it does is it indicates a location.

03:52:36 7 Q. A location. It doesn't necessarily indicate a
03:52:38 8 specific user?

03:52:39 9 A. No. Absolutely not.

03:52:41 10 Q. Now, is there any way of determining who was
03:52:47 11 actually sitting at the keyboard of the IP address in
03:52:53 12 question in this case?

03:52:54 13 A. Not in this case. The way I try to do it in
03:53:00 14 other cases is laptops now all have kind of a webcam
03:53:07 15 attached to the top of it. Certain computers now, when
03:53:11 16 you hit the power button and turn it on, it actually
03:53:14 17 will take a picture of the person behind the keyboard.

03:53:17 18 Q. But was there a web cam like this in this case?

03:53:21 19 A. No. Not in this case.

03:53:22 20 Q. So we have no picture of actually who was sitting
03:53:25 21 at the computer during these 34 incidents in question?

03:53:29 22 A. No, not in this case, no.

03:53:32 23 Q. Now, you mentioned a password a couple moments
03:53:36 24 ago. When you examined Alex's hard drive, were you able
03:53:44 25 to determine if anyone could just get on the computer?

03:53:49 1 A. When I was looking over the hard drive, there was
03:53:54 2 a device on the computer that -- a biometric thing. All
03:53:58 3 you have to do is swipe your finger once and the
03:54:01 4 computer is open. So you don't have -- the screen
03:54:06 5 saver's not coming on and asking for the password.

03:54:10 6 Q. So if you were to swipe your finger once on the
03:54:13 7 biometric device then get up and go to the fridge, could
03:54:17 8 I climb into your seat and get on the computer?

03:54:20 9 A. Oh, sure.

03:54:22 10 MS. KELLEY: May I have a moment, Your
03:54:26 11 Honor?

03:54:27 12 THE COURT: Sure.

03:54:27 13 (Discussion had off the record.)

03:54:34 14 BY MS. KELLEY:

03:54:35 15 Q. Were there any default settings on the LimeWire?

03:54:38 16 A. They're all default.

03:54:39 17 Q. What do you mean by that?

03:54:40 18 A. When you download LimeWire from the internet, it
03:54:45 19 comes in and a screen pops up; it says -- it will give
03:54:50 20 you some configurations after LimeWire's been
03:54:54 21 downloaded. You hit that "next" button. Another screen
03:54:58 22 comes up, gives you some settings, go ahead and hit that
03:55:01 23 "next" button. Really based on what I've seen everyone
03:55:06 24 generally uses the default because it's too complicated
03:55:10 25 to reconfigure LimeWire. All they do is hit "next," and

03:55:13 1 it's installed.

03:55:14 2 MS. KELLEY: Thank you, Your Honor. I have
03:55:15 3 no more questions.

03:55:16 4 THE COURT: Mr. Crawford or Mr. Secor?

03:55:19 5 MR. SECOR: Mr. Crawford will be
03:55:21 6 questioning.

03:55:41 7 THE COURT: Counsel, do you want to approach
03:55:43 8 for one second?

03:55:43 9 (The following discussion was had at the
03:56:44 10 bench outside the hearing of the jury:)

03:56:44 11 THE COURT: Do you want her to read back
03:56:44 12 whatever you missed?

03:56:44 13 MR. CRAWFORD: No, Judge, that's fine. I
03:56:44 14 can just ask him briefly.

03:56:44 15 THE COURT: I'm glad to let you do it.

03:56:46 16 (End of sidebar discussion).

03:57:11 17 - - -

03:57:11 18 MARK VASSEL, CROSS-EXAMINATION

03:57:12 19 BY MR. CRAWFORD:

03:57:12 20 Q. Mr. Vassel, you examined Mr. Cook's computer; is
03:57:15 21 that true?

03:57:15 22 A. Yes, I did, sir.

03:57:16 23 Q. You also examined a mirror image of the laptop?

03:57:19 24 A. I examined the mirror image of the laptop.

03:57:22 25 Q. You found that mirror image to be identical to

03:57:25 1 the actual laptop hard drive itself?

03:57:28 2 A. That's correct.

03:57:28 3 Q. You produced your report in this case; is that
03:57:31 4 true?

03:57:31 5 A. Yes, I did.

03:57:32 6 Q. It was dated August 24, 2011?

03:57:36 7 A. Yes.

03:57:37 8 Q. You made a number of conclusions in that report?

03:57:39 9 A. Yes, I did.

03:57:39 10 Q. Have any of your conclusions you made in that
03:57:42 11 report changed since you issued it?

03:57:44 12 A. No.

03:57:45 13 Q. Page 5 of your report you indicated that there
03:57:48 14 were file names which, if opened, contained images of
03:57:50 15 movies that a jury could find to depict minors engaged
03:57:54 16 in various forms of undress. Where were those file
03:57:57 17 names?

03:57:57 18 A. I'm sorry?

03:57:58 19 Q. Where were those file names that you indicated
03:58:00 20 that you found that contained images and movies that a
03:58:04 21 jury could find minors in various forms of undress?

03:58:09 22 A. Those were in the shareholder.

03:58:11 23 THE COURT: Excuse me. You're too young to
03:58:18 24 perhaps understand 45 and 78. Will you go a little
03:58:22 25 slower.

03:58:22 1 MR. CRAWFORD: I will.

03:58:23 2 BY MR. CRAWFORD:

03:58:24 3 Q. Let me start again. You indicated in your report
03:58:27 4 that you located file names which, if opened, contained
03:58:30 5 images and movies that a jury could find to depict
03:58:33 6 minors engaged in various forms of undress. Is that
03:58:37 7 true?

03:58:37 8 A. That's true.

03:58:42 9 Q. And those files were located in the LimeWire
03:58:46 10 saved folder?

03:58:47 11 A. I believe some of them, yes.

03:58:49 12 Q. And when you're reviewing, why did you choose
03:58:52 13 some file names over others to check to see if they
03:58:56 14 contained child pornography?

03:58:57 15 A. What I did is I focused on the 302 that was
03:59:00 16 provided, the undercover session. When I say the
03:59:04 17 undercover session, the FBI did their peer-to-peer
03:59:08 18 investigation, gave me a report, when I say a 302, of
03:59:13 19 the files that they found.

03:59:14 20 Q. And the file names that were listed in the 302,
03:59:17 21 you found those to be consistent with names that depict
03:59:22 22 child pornography; is that true?

03:59:23 23 A. Yes.

03:59:24 24 Q. And you indicated that you found LimeWire 5.3.6,
03:59:28 25 that's the version number, you found that installed on

03:59:30 1 the laptop?

03:59:31 2 A. Yes, I did.

03:59:32 3 Q. It was installed July 31, 2009?

03:59:34 4 A. That's correct.

03:59:40 5 Q. You further indicated that you conducted a review
03:59:43 6 of the saved file folder and located file names which,
03:59:48 7 if opened, would display images, music, or movies that
03:59:54 8 could be viewed by the computer system?

03:59:55 9 A. That's correct.

04:00:17 10 Q. Let me show you a page from Government's Exhibit
04:00:19 11 15, if I could.

04:00:26 12 MR. CRAWFORD: We're working on it.

04:00:34 13 THE COURT: It looks like a Persian rug.

04:00:36 14 MR. CRAWFORD: The original looks a lot
04:00:39 15 better.

04:01:20 16 THE COURT: Seriously, can you tell what the
04:01:24 17 problem is?

04:01:25 18 THE WITNESS: The resolution on the laptop?

04:01:52 19 BY MR. CRAWFORD:

04:01:53 20 Q. All right. Well, we'll just talk about it. So
04:01:55 21 you opened Windows Explorer. You were able to do that
04:01:58 22 with the image?

04:01:59 23 A. What I used was EnCase. I'm not -- you have to
04:02:06 24 use forensically sound software, just because you don't
04:02:11 25 want to go changing -- altering the dates and times.

04:02:20 1 MR. CRAWFORD: We're back in business.

04:02:28 2 BY MR. CRAWFORD:

04:02:28 3 Q. Okay. Do you see an image there? It's a page
04:02:31 4 from Government's Exhibit 15.

04:02:34 5 A. My monitor is still --

04:02:36 6 MS. KELLEY: Excuse me. My monitor is
04:02:39 7 blurry as well.

04:02:46 8 BY MR. CRAWFORD:

04:02:47 9 Q. The images you looked at in "LimeWire saved,"
04:02:51 10 where in the file structure of the computer were they
04:02:54 11 located, if you could explain that?

04:02:55 12 A. As far as the file structure they're within the
04:02:58 13 LimeWire program. When you saw LimeWire you have
04:03:01 14 incomplete -- a folder called the "incomplete
04:03:04 15 installed," "shared installed" or "saved," depending on
04:03:07 16 the version of LimeWire and stored purchased.

04:03:11 17 Q. And the LimeWire "saved" folder is populated by
04:03:16 18 LimeWire saved folders?

04:03:19 19 A. That's true.

04:03:20 20 Q. In that LimeWire saved folder on the laptop you
04:03:26 21 identified and were able to find all of the files that
04:03:29 22 were downloaded in the undercover session; is that true?

04:03:32 23 A. That's true.

04:03:33 24 Q. The undercover session you understand to be an
04:03:36 25 FBI agent in Oklahoma who downloaded child pornography

04:03:40 1 sessions over the internet?

04:03:41 2 A. That's correct.

04:03:42 3 Q. You found that the images from the undercover
04:03:55 4 session from the FBI agent in Oklahoma came from an IP
04:03:58 5 address that was linked to Mr. Cook's internet service
04:04:01 6 account?

04:04:02 7 A. Right. I did find the images.

04:04:03 8 Q. You found evidence that LimeWire's file sharing
04:04:08 9 was turned on?

04:04:09 10 A. That's correct.

04:04:09 11 Q. And you conducted a review of the most recently
04:04:12 12 used items for Windows?

04:04:14 13 A. Yes, I did.

04:04:15 14 Q. And there were numerous adult pornographic links
04:04:19 15 that were found there?

04:04:20 16 A. That's true.

04:04:21 17 Q. You also conducted a review of the incomplete
04:04:23 18 folder?

04:04:24 19 A. Yes, I did.

04:04:25 20 Q. And the incomplete folder is a folder that
04:04:28 21 contains information about LimeWire files that are to be
04:04:33 22 downloaded but have to not been downloaded?

04:04:36 23 A. That's true.

04:04:37 24 Q. You said there are file names in the incomplete
04:04:40 25 folder consistent with possible pornography involving a

04:04:43 1 minor?

04:04:44 2 A. That's true.

04:04:46 3 Q. And the reason you concluded that is because some
04:04:50 4 of those file names contained terms that are commonly
04:04:55 5 associated with child pornography; is that true?

04:04:57 6 A. Yes.

04:05:07 7 Q. And some of those file names, Lolita for one, is
04:05:13 8 that one consistent with child pornography?

04:05:15 9 A. I've seen it in other cases, yes.

04:05:19 10 Q. And do you recall the date -- and the incomplete
04:05:28 11 file, that that was created?

04:05:30 12 A. Not off the top of my head.

04:05:31 13 Q. Could I show you a copy of your report. Would
04:05:34 14 that refresh your recollection?

04:05:35 15 A. Yes.

04:05:37 16 THE COURT: Before we do, for purpose of
04:05:40 17 identification can we have it marked, whether it goes
04:05:43 18 back to the jury or not, just so the record shows what
04:05:46 19 we're talking about.

04:05:58 20 MS. KELLEY: Gene --

04:05:59 21 MR. CRAWFORD: It's appendix F to his
04:06:06 22 report.

04:06:10 23 BY MR. CRAWFORD:

04:06:10 24 Q. Let me hand you what's been marked as
04:06:12 25 Government's Exhibit 21. And what is that document?

04:06:17 1 A. The exhibit here, 21, is the files contained
04:06:23 2 within the incomplete folder.

04:06:24 3 Q. And is that a list of the incomplete file and
04:06:28 4 incomplete folder for LimeWire; is that true?

04:06:31 5 A. True.

04:06:31 6 Q. Could you locate a file name there, I believe the
04:06:34 7 first word is "German."

04:06:41 8 A. Okay. I found it.

04:06:42 9 Q. Could you read that file name, please.

04:06:44 10 A. File name German school girls in pretty orgy
04:06:51 11 Devon C XXX porno sexy girl Lolita Russian dick fuck
04:07:00 12 suck child PEDO lesbian animal sister brother
04:07:04 13 masturbating humping.

04:07:06 14 Q. That is a file to be downloaded from LimeWire?

04:07:09 15 A. That's correct.

04:07:09 16 Q. What's the file created date under there?

04:07:13 17 A. The file created date would be 4/2, 2010 at
04:07:17 18 1:30 -- 2:30 a.m.

04:07:27 19 Q. And there were other files in the incomplete
04:07:31 20 consistent with child pornography?

04:07:33 21 A. There were.

04:07:34 22 Q. Virgin teen gets raped in her own house. Is that
04:07:38 23 consistent with child pornography?

04:07:39 24 A. It can --

04:07:40 25 Q. Illegal preteen underage Lolita?

04:07:44 1 A. Preteen, yes.

04:07:45 2 Q. You never actually saw these files?

04:07:48 3 A. No. They're incomplete.

04:07:49 4 Q. But you saw the file names, and that indicated to
04:07:52 5 you possible child pornography?

04:07:53 6 A. Right. I'm able to identify the file names after
04:07:57 7 doing this for a while.

04:08:02 8 Q. And isn't it true when you're surfing for child
04:08:05 9 pornography you look at the file names as a good
04:08:07 10 indicator of whether a file might, in fact, depict
04:08:10 11 children engaged in sexually explicit conduct?

04:08:13 12 A. It's an okay indicator. I've had it where you
04:08:16 13 double click on a file and it's renamed, a renamed file.

04:08:21 14 Q. The converse is true?

04:08:22 15 A. Exactly.

04:08:24 16 Q. You also indicated in your testimony that of the
04:08:28 17 files you reviewed in the LimeWire saved folder, the
04:08:31 18 created time and the last accessed time matched?

04:08:36 19 A. That's correct.

04:08:36 20 Q. And the testimony, as I understand it, was once a
04:08:41 21 file is created, it has a created date, then each time
04:08:43 22 it's viewed the accessed date is updated?

04:08:45 23 A. That's correct.

04:08:46 24 Q. So if a file was created last year, viewed this
04:08:49 25 morning, the created time would be last year, the

04:08:51 1 accessed date would be sometime today?

04:08:53 2 A. It could also be an antivirus running.

04:08:57 3 Q. What version of Microsoft windows was Mr. Cook
04:09:00 4 running?

04:09:01 5 A. I know I created an exhibit on it. I want to say
04:09:09 6 it was either 7 or Vista.

04:09:33 7 Q. Mr. Vassel, handing you what's been marked
04:09:35 8 Government's Exhibit 22. What's that document?

04:09:37 9 A. This document here, Government's Exhibit 22, is
04:09:42 10 information about the Windows on the system.

04:09:45 11 Q. Okay. And do you have recorded there what
04:09:48 12 version of windows Mr. Cook was running?

04:09:52 13 A. It says Windows 2009. Okay, Windows Vista
04:10:14 14 Ultimate.

04:10:15 15 Q. Does Windows Vista Ultimate have a feature that
04:10:25 16 would update last accessed?

04:10:27 17 A. Yes, it does.

04:10:28 18 Q. Okay. And isn't it true that Windows Vista
04:10:32 19 Ultimate when it's sold off the shelf, it comes from the
04:10:35 20 factory with that last accessed time updating feature
04:10:39 21 turned off?

04:10:39 22 A. It depends on the installation. In this case it
04:10:43 23 was actually turned on.

04:10:45 24 Q. It was turned on?

04:11:16 25 Mr. Vassel, I'm handing you what's been marked

04:11:18 1 Government's Exhibit 23. What is that document?

04:11:22 2 A. This is the saved document I created.

04:11:29 3 Q. What sort of information is listed there?

04:11:30 4 A. You have the file created, last accessed, and
04:11:35 5 full file path.

04:11:36 6 Q. And about how many files are in that folder?

04:11:45 7 A. I thought there was over 800.

04:11:48 8 Q. Okay. And that is a printout of information
04:11:50 9 including last accessed times and created times for the
04:11:55 10 files that were in Mr. Cook's LimeWire saved folder?

04:11:58 11 A. That's correct.

04:11:59 12 Q. Out of all of those files, those 100 pages, can
04:12:03 13 you identify a single file that does not have a matching
04:12:05 14 created and accessed time?

04:12:09 15 A. It might take a little bit here.

04:12:11 16 Q. Sure.

04:12:14 17 THE COURT: Can you represent to him whether
04:12:15 18 that is so or not?

04:12:15 19 BY MR. CRAWFORD:

04:12:19 20 Q. Mr. Vassel, there isn't a single file that has a
04:12:22 21 different created time from its accessed time?

04:12:24 22 THE COURT: Can you dispute that?

04:12:26 23 THE WITNESS: No.

04:12:26 24 Q. So it's your opinion of the 800 files, Mr. Cook
04:12:31 25 never viewed a single one?

04:12:33 1 A. He would have to go to the saved folder and
04:12:35 2 double click on the Keri Hilson, Knock You Down, Kanye
04:12:40 3 West, and change that.

04:12:41 4 Q. And he never did that for a single one of the
04:12:43 5 files in LimeWire?

04:12:44 6 A. Nothing in there, no.

04:12:48 7 Q. And if, in fact, the last accessed updating
04:12:52 8 feature had been turned off, then the fact that -- the
04:12:55 9 saved times and the accessed times would tell us nothing
04:12:58 10 about how many times a given file was viewed; isn't that
04:13:01 11 true?

04:13:01 12 A. Even if it was turned on or off, you can't make
04:13:04 13 that determination.

04:13:06 14 Q. Okay. Evidence of key word searches.

04:13:08 15 A. Yes.

04:13:09 16 Q. It's true that LimeWire runs by key words; is
04:13:11 17 that correct?

04:13:12 18 A. That's correct.

04:13:13 19 Q. All right. And it's true that a LimeWire user,
04:13:25 20 when they enter key words into LimeWire, LimeWire
04:13:28 21 searches the Gnutella network for other LimeWire users
04:13:32 22 that would have file names that match those search
04:13:34 23 terms?

04:13:34 24 A. That is true.

04:13:35 25 Q. So, for example, if someone typed in the word

04:13:37 1 Jimmy Hendrix, they would get songs back with the word
04:13:41 2 Jimmy Hendrix in the file name?

04:13:43 3 A. Right.

04:13:43 4 Q. If someone typed in Lolita, they would get file
04:13:47 5 names back, maybe a copy of the book Lolita, maybe child
04:13:51 6 pornography?

04:13:51 7 A. That's correct.

04:13:52 8 Q. So it's true that if somebody typed in illegal
04:13:57 9 preteen underage Lolitas, they would get back file names
04:14:01 10 that contained illegal underage Lolitas?

04:14:04 11 A. That's true.

04:14:05 12 Q. And if they select those files to view them, a
04:14:09 13 copy of that file goes into the saved folder?

04:14:12 14 A. Yes.

04:14:12 15 Q. And a copy of that file contains the same name as
04:14:15 16 what was produced in the search result, true?

04:14:21 17 A. Generally LimeWire file names are long. There
04:14:23 18 could be 26 different letters or words in it. But it
04:14:29 19 would have to contain at least a portion of that, yes.

04:14:32 20 Q. You said you indicated that you did some review
04:14:35 21 of key word searching in LimeWire?

04:14:37 22 A. Some of the fragments. LimeWire doesn't maintain
04:14:41 23 the entire list of key words, but it does go through
04:14:45 24 page fragments or virtual memory of the machine.

04:14:48 25 Q. By "fragments" you mean incomplete information?

04:14:51 1 A. By "fragments," whatever file search term is
04:14:55 2 recoverable.

04:14:56 3 Q. So there may be some that are unrecoverable?

04:14:59 4 A. That's true.

04:15:05 5 MR. CRAWFORD: I have no further questions,
04:15:07 6 Judge.

04:15:07 7 THE COURT: Redirect?

04:15:13 8 - - -

04:15:13 9 MARK VASSEL, REDIRECT EXAMINATION

04:15:15 10 BY MS. KELLEY:

04:15:15 11 Q. Mark, I'm going to try to put what happened in
04:15:24 12 English. First of all, let's go to that exhibit marked
04:15:33 13 incomplete.

04:15:34 14 A. Okay.

04:15:40 15 MS. KELLEY: Could I approach the witness?

04:15:50 16 THE COURT: Of course. I'm sorry. It's
04:15:55 17 not necessary for you to ask. No problem. I know it's
04:15:58 18 a matter of protocol that's drilled into you in law
04:16:01 19 school.

04:16:02 20 MS. KELLEY: Thank you.

04:16:02 21 THE COURT: But it's quite all right.

04:16:04 22 BY MS. KELLEY:

04:16:04 23 Q. Mark, I'm handing you a document you previously
04:16:07 24 looked at. Could you tell the jury what it is.

04:16:09 25 A. It's the incomplete file folder.

04:16:11 1 THE COURT: What exhibit number is it,
04:16:13 2 please, for the record?

04:16:14 3 MR. CRAWFORD: Judge, it's 21. I took it
04:16:16 4 back. You're certainly welcome to use it.

04:16:21 5 BY MS. KELLEY:

04:16:21 6 Q. And this is a two-page document, correct?

04:16:23 7 A. That's correct.

04:16:24 8 Q. Now, the undercover session that we're talking
04:16:31 9 about, that is to say the session that was run by the
04:16:36 10 fellow in Oklahoma, that was from approximately June
04:16:41 11 through September, correct?

04:16:42 12 A. That's correct.

04:16:44 13 Q. All right. And this document has a few dates
04:16:47 14 that predate that, correct?

04:16:49 15 A. Yes.

04:16:50 16 Q. Okay. Starting at the very top, would you give
04:16:59 17 the date the file was created and the name of that file.

04:17:06 18 A. Yes. In fact, looking at the incomplete,
04:17:11 19 Government's Exhibit 1.

04:17:14 20 Q. 21.

04:17:15 21 A. One of the questions was: Show me a date or
04:17:17 22 something in LimeWire where -- out of the 800 files
04:17:22 23 where they don't match. Number one is actually an
04:17:26 24 example, a file folder --

04:17:29 25 Q. Mark, I'm going to interrupt you. Can you just

04:17:31 1 go through this list and give us the dates that these --
04:17:37 2 these dozen or so files have?

04:17:42 3 A. Well, the first one here is going to be the
04:17:44 4 LimeWire incomplete folder. It was created July 31,
04:17:48 5 2009.

04:17:49 6 Q. The next?

04:17:49 7 A. The last accessed --

04:17:52 8 Q. No, just give the date of the next one.

04:17:54 9 A. The next one is 4/19, 2010.

04:17:58 10 Q. And the next?

04:17:58 11 A. 2/17, 2010.

04:18:00 12 Q. Uh-huh.

04:18:01 13 A. 4 -- 04/02, 2010.

04:18:05 14 Q. Uh-huh?

04:18:06 15 A. 5/13/2010, 9/3/2010, 6/23/2010, 9/3/2010,
04:18:28 16 9/14/2010.

04:18:30 17 Q. All right. So by my calculation, three of these
04:18:35 18 files predated the undercover session, correct?

04:18:39 19 A. That's correct.

04:18:40 20 Q. That is to say the one -- two in April and one in
04:18:45 21 February?

04:18:46 22 A. That's correct.

04:18:47 23 Q. And these three files have names that are
04:18:53 24 suggestive of child pornography, correct?

04:18:55 25 A. Yes.

04:18:57 1 Q. Notwithstanding the fact that all of these files
04:19:04 2 are sitting in the incomplete folder or file or whatever
04:19:11 3 you call it, is there any indication whatsoever that any
04:19:16 4 of those files, whether they fall within the undercover
04:19:22 5 session or predate the undercover session, were actually
04:19:28 6 viewed?

04:19:28 7 A. No. In fact --

04:19:30 8 Q. How about downloaded?

04:19:32 9 A. They're in the process or maybe partially, but
04:19:36 10 they haven't been completely downloaded. You can't view
04:19:40 11 files normally through the incomplete. Double click on
04:19:45 12 it, it's not going to --

04:19:47 13 Q. So the bottom line is this holds no significance
04:19:49 14 whatsoever?

04:19:50 15 A. No. None.

04:19:51 16 Q. Then moving on --

04:19:56 17 THE COURT: Let me ask -- can you approach
04:19:59 18 one second?

04:19:59 19 (Whereupon the following discussion was had
04:21:17 20 at the bench outside the hearing of the jury:)

04:21:17 21 THE COURT: I'm confused by that answer, no
04:21:17 22 significance whatsoever. It's dangling. It's your
04:21:17 23 case. I'm saying when I heard it, I didn't understand
04:21:17 24 it. It was a dangling participle.

04:21:17 25 And, Gene, slow down a little bit.

04:21:18 1 Seriously. I had a case, Brendan Sullivan's case. He
04:21:18 2 once actually held up a sign to Barry Simon telling him
04:21:18 3 to slow down.

04:21:18 4 (End of sidebar discussion.)

04:21:19 5 THE COURT: Thank you. I apologize for the
04:21:21 6 interruption. You may continue.

04:21:23 7 BY MS. KELLEY:

04:21:24 8 Q. Mark, I'm going to have you complete or explain
04:21:30 9 the last point you raised in regard to the files posted
04:21:36 10 on the incomplete setting. Is there any significance at
04:21:45 11 all to the fact that these title names appear in the
04:21:52 12 incomplete file?

04:21:53 13 A. I guess the significance is you can't open it.
04:22:00 14 The -- there's -- it's impossible. I can open it as --

04:22:08 15 Q. And you can conclude that these files were never
04:22:11 16 opened, correct?

04:22:12 17 A. That's correct.

04:22:13 18 Q. Never downloaded?

04:22:15 19 A. Never viewed.

04:22:16 20 Q. Never viewed, organized?

04:22:17 21 A. That's correct.

04:22:18 22 Q. They were just there?

04:22:20 23 A. That's correct.

04:22:25 24 Q. Thank you. Now, I want to go to that huge
04:22:28 25 attachment called -- the 100-page attachment. What,

04:22:35 1 again, was that called?

04:22:36 2 A. It's the saved folder.

04:22:39 3 Q. The saved folder. Now, as Mr. Crawford pointed
04:22:45 4 out, virtually every one of those files has the same
04:22:51 5 time of creation as the time of accessed.

04:22:55 6 A. That's correct.

04:22:57 7 Q. Now, should we then conclude that -- well, strike
04:23:02 8 that. Not all of the titles that appear on there are
04:23:08 9 child pornography, are they?

04:23:09 10 A. No. There's quite a few music, MP3, music files.

04:23:14 11 Q. And there's a little adult porn thrown in there
04:23:17 12 too, isn't there?

04:23:18 13 A. Yes.

04:23:18 14 Q. Are we to conclude that there were just 800 files
04:23:22 15 sitting on this computer that had never been listened to
04:23:27 16 or viewed or anything?

04:23:28 17 A. In this attachment you can conclude they haven't
04:23:34 18 been opened or viewed or displayed.

04:23:36 19 Q. Why on earth would someone have a bunch of music
04:23:39 20 on a computer and not listen to it?

04:23:41 21 A. They don't know where it is, they haven't turned
04:23:47 22 their computer on, or they may not even know how to
04:23:51 23 navigate to it.

04:23:51 24 Q. ^ sometimes when people get on LimeWire and give
04:23:55 25 a request, it's kind of a bulk request, isn't it?

04:23:58 1 A. You can select. It's kind of a misnomer with
04:24:00 2 users where -- in other cases that I've heard about
04:24:04 3 where everyone thinks you double click on one file and
04:24:08 4 you randomly select. The truth of the matter is when
04:24:10 5 they use LimeWire they click on the first file, and they
04:24:15 6 take that cursor and they highlight a bunch of other
04:24:19 7 files and download those files.

04:24:22 8 Q. So when you make a request, you get a lot of junk
04:24:25 9 mail as well?

04:24:25 10 A. You get whatever has been highlighted.

04:24:29 11 MS. KELLEY: May I have a moment, Your
04:24:30 12 Honor?

04:24:30 13 THE COURT: Of course.

04:24:33 14 (Discussion had off the record.)

04:24:34 15 MS. KELLEY: Nothing further. Thank you.

04:24:35 16 THE COURT: Cross.

04:24:38 17 - - -

04:24:38 18 MARK VASSEL, RECROSS-EXAMINATION

04:24:39 19 BY MR. CRAWFORD:

04:24:39 20 Q. Mr. Vassel, let me show you Government's Exhibit
04:24:45 21 21 again. This is the incomplete folder.

04:24:54 22 A. Okay.

04:24:55 23 Q. This is a list of files selected for download on
04:25:00 24 LimeWire but had not been completed?

04:25:02 25 A. That's correct.

04:25:03 1 Q. So, for example, on April 19, 2010, someone using
04:25:06 2 this computer using LimeWire selected a file from
04:25:29 3 LimeWire to download entitled virgin teen gets raped in
04:25:33 4 her own house rape fantasy illegal preteen underage
04:25:38 5 Lolitas kiddie child incest triple-X porno gay fuck.
04:25:45 6 MPG.

04:25:46 7 A. Yes.

04:25:47 8 Q. It's also true on April 2, 2010, someone using
04:25:50 9 LimeWire selected a file entitled German school girls in
04:25:54 10 pre orgy Devon C triple-X porno sexy girl Lolita Russian
04:26:01 11 doing cock suck child PEDO animal brother sister
04:26:06 12 masturbating. They selected that file for download; is
04:26:09 13 that correct?

04:26:09 14 A. That's correct.

04:26:11 15 MR. CRAWFORD: No further questions, Judge.

04:26:15 16 THE COURT: Ms. Kelley?

04:26:17 17 - - -

04:26:17 18 MARK VASSEL, FURTHER REDIRECT EXAMINATION

04:26:18 19 BY MS. KELLEY:

04:26:18 20 Q. In terms of those last titles, any evidence that
04:26:21 21 that person actually viewed those files?

04:26:23 22 A. No.

04:26:24 23 Q. Saw them?

04:26:24 24 A. No.

04:26:25 25 Q. Opened them?

04:26:26 1 A. No.

04:26:26 2 Q. Categorized them?

04:26:27 3 A. No.

04:26:28 4 Q. Filed them?

04:26:29 5 A. No.

04:26:29 6 Q. Experienced them?

04:26:31 7 A. No.

04:26:32 8 Q. Did anything with them?

04:26:34 9 A. No.

04:26:36 10 Q. Any idea who was sitting at the keyboard?

04:26:38 11 A. None.

04:26:40 12 MS. KELLEY: No more questions. Thank you,

04:26:41 13 Your Honor.

04:26:42 14 THE COURT: Mr. Crawford?

04:26:44 15 MR. CRAWFORD: No questions, Judge.

04:26:45 16 THE COURT: Mr. Vassel, you may step down.

04:26:50 17 THE WITNESS: Thank you, Judge.

04:26:51 18 THE COURT: You're welcome to stay or free

04:26:56 19 to go. It's entirely up to you.

04:27:16 20 Ms. Kelley?

04:27:18 21 MS. KELLEY: Thank you, Your Honor. At this

04:27:19 22 point the defense will rest.

04:27:21 23 THE COURT: Both sides have rested?

04:27:24 24 MS. KELLEY: Yes.

04:27:25 25 THE COURT: Subject to admission of

04:27:26 1 exhibits?

04:27:27 2 MS. KELLEY: Correct.

04:27:27 3 THE COURT: Mr. Secor, do you have rebuttal?

04:27:30 4 MR. SECOR: We do.

04:27:32 5 THE COURT: Ladies and gentlemen, the

04:27:32 6 government is entitled to present what is called

04:27:35 7 rebuttal evidence. And in general that evidence is

04:27:40 8 confined to topics covered during the course of the

04:27:45 9 defense presentation in this case. Mr. Secor, who is

04:27:48 10 your first rebuttal witness?

04:27:49 11 MS. KELLEY: Excuse me, Your Honor. Could

04:27:51 12 we have a five-minute break or less?

04:27:53 13 THE COURT: Sure. Come on up for one

04:27:55 14 second.

04:28:44 15 (Discussion had off the record.)

04:28:48 16 MR. CRAWFORD: We would call Detective David

04:28:53 17 Morford.

04:29:18 18 THE COURT: Detective, you have previously

04:29:21 19 been sworn, and you remain under oath.

04:29:32 20 - - -

04:29:32 21 DAVID MORFORD, DIRECT EXAMINATION

04:29:33 22 BY MR. CRAWFORD:

04:29:33 23 Q. Detective Morford, you previously testified you

04:29:50 24 conducted an examination on an image of Government's

04:29:54 25 Exhibit 7, which is Mr. Cook's computer. Is that true?

04:29:56 1 A. That's correct.

04:29:57 2 Q. You did an FTK report on that computer?

04:30:00 3 A. Yes, I did.

04:30:01 4 Q. Were you able to determine what version of
04:30:07 5 Windows he was using at the time -- what version of
04:30:12 6 Windows Mr. Cook's computer had on it?

04:30:15 7 A. Vista Ultimate.

04:30:17 8 Q. When Windows Vista Ultimate is sold off the
04:30:23 9 shelf, does have it a last accessed updating feature on
04:30:27 10 the file on it?

04:30:28 11 A. No. Windows Vista Ultimate, the default is to
04:30:32 12 not update the last accessed date and times.

04:30:34 13 Q. What is the practical effect of that?

04:30:36 14 A. Microsoft built that into Vista to be a
04:30:39 15 performance enhancer.

04:30:41 16 Q. And how could it be a performance enhancer?

04:30:44 17 A. The operating system, it's one thing the
04:30:48 18 operating system does not have to do when you access a
04:30:50 19 file.

04:30:50 20 Q. And is the end result the created time and
04:30:53 21 accessed time are always the same?

04:30:54 22 A. Not always. If you modify a file, the accessed
04:30:57 23 time would change. But just by opening it would not
04:31:01 24 change.

04:31:01 25 Q. So if someone never modifies a file, they just

04:31:04 1 open it, the accessed and created dates will always be
04:31:07 2 the same?

04:31:07 3 A. Correct.

04:31:10 4 Q. Did you make any determination in your
04:31:14 5 examination of the computer about whether or not this
04:31:17 6 last accessed updating feature had been turned off on
04:31:20 7 Mr. Cook's computer?

04:31:21 8 A. We tested that image in virtual box. I opened up
04:31:26 9 the first file on the list in the LimeWire saved. I
04:31:30 10 went to the properties of the file, looked at the
04:31:33 11 accessed date and time. I then opened the image, closed
04:31:40 12 the image, looked at the properties again. It had not
04:31:44 13 changed.

04:31:45 14 Q. So using the virtual box you opened an image of
04:31:48 15 child pornography from Mr. Cook's computer. You closed
04:31:51 16 the image?

04:31:51 17 A. Correct.

04:31:52 18 Q. And what did that do to the last accessed time
04:31:54 19 for that?

04:31:57 20 A. Nothing.

04:32:01 21 Q. All right. Let me show you what's previously
04:32:05 22 been marked as Government's Exhibit 16. Is this a copy
04:33:12 23 of your FTK report?

04:33:14 24 A. Yes.

04:33:15 25 Q. Let me show you an item called "list files by

04:33:21 1 properties." You testified yesterday, for example, we
04:33:28 2 looked at one image. It's an image right here. Do you
04:33:37 3 see that file, 9YO Jennie?

04:33:40 4 A. Yes.

04:33:40 5 Q. You'll see a created date at the bottom. What's
04:33:44 6 that created date?

04:33:45 7 A. 5/19/2010.

04:33:48 8 Q. It's got a modified date. What is that time?

04:33:51 9 A. 5/19/2010.

04:33:53 10 Q. Accessed date?

04:33:54 11 A. The same, 5/19/2010.

04:34:25 12 Q. You also located a file on here 2/2, 13 year old
04:34:29 13 little girls get come in face?

04:34:31 14 A. Yes.

04:34:31 15 Q. Is that a file you located off Mr. Cook's
04:34:34 16 computer?

04:34:35 17 A. Yes.

04:34:35 18 Q. What's the created date there?

04:34:37 19 A. 4/19/2010.

04:34:38 20 Q. Accessed date?

04:34:39 21 A. 4/10/2010.

04:34:41 22 Q. Let me play this video for 15 or 20 seconds so
04:34:46 23 you can identify it.

04:35:07 24 (Video shown in open court.)

04:35:33 25 BY MR. CRAWFORD:

04:35:33 1 Q. All right. Is that one of the files that you
04:35:35 2 downloaded from the HP laptop?

04:35:38 3 A. Yes.

04:35:47 4 Q. Here's another one entitled Lucifer's PEDOs
04:35:52 5 collection 3, 4?

04:35:54 6 A. Yes.

04:35:54 7 Q. What's the date created?

04:35:56 8 A. 5/20/2010.

04:35:58 9 Q. And the accessed date?

04:35:59 10 A. 5/20/2010.

04:36:03 11 MR. CRAWFORD: No further questions, Judge.

04:36:22 12 - - -

04:36:22 13 DAVID MORFORD, CROSS-EXAMINATION

04:36:23 14 BY MS. KELLEY:

04:36:23 15 Q. Good afternoon.

04:36:24 16 A. Hello.

04:36:24 17 Q. You can disable the updating device, can't you?

04:36:27 18 A. One more time?

04:36:28 19 Q. You can disable the updating device, can't you?

04:36:31 20 A. The accessed dates and time?

04:36:32 21 Q. No, the disabling -- the updating device.

04:36:35 22 A. On?

04:36:37 23 Q. On Windows.

04:36:39 24 A. I guess I don't understand your question.

04:36:42 25 Q. Never mind. Then I noticed on a number of those

04:36:46 1 various files that the modification date was different.

04:36:51 2 Why is that?

04:36:52 3 A. It could have been from the file being moved
04:36:55 4 before it was touched.

04:36:58 5 Q. Okay. And did we discuss Windows at all
04:37:01 6 yesterday?

04:37:02 7 A. You and I did not.

04:37:05 8 Q. And how about with the government?

04:37:07 9 A. We mentioned Windows Vista.

04:37:09 10 Q. All right. But you never talked about updating
04:37:12 11 yesterday, did you?

04:37:13 12 A. Date and times?

04:37:15 13 Q. Correct.

04:37:15 14 A. I believe I was asked that question, and I
04:37:17 15 believe I answered it yesterday.

04:37:19 16 MS. KELLEY: All right. Thank you.

04:37:21 17 MR. CRAWFORD: No questions, Judge.

04:37:23 18 THE COURT: Detective, you may step down.

04:37:27 19 Ladies and gentlemen, I have to take about a
04:37:29 20 half hour break. I'm sorry. I'm quite confident that
04:37:34 21 we'll complete with another half hour or so of
04:37:37 22 testimony. And once we do, I will excuse you for the
04:37:40 23 day. And tomorrow morning we'll start with my reading
04:37:44 24 to you the final charge, and the closing arguments of
04:37:49 25 counsel, and the case will be in your hands I imagine by

04:37:52 1 around 11:00, 11:30 in the morning or so. At that point
04:37:57 2 you can begin your deliberations or not; it's up to you.
04:38:01 3 In any event the schedule will be entirely in your own
04:38:04 4 hands, when you want to convene to deliberate, when you
04:38:07 5 want to adjourn, when you want to have lunch, whether
04:38:11 6 you want to remain in the courthouse or outside. All of
04:38:14 7 that is entirely up to you. But we'll try to resume
04:38:17 8 about quarter of or so.

04:38:19 9 In the meantime don't talk about the case.
04:38:21 10 Keep an open mind. We will be finishing shortly
04:38:25 11 thereafter.

05:17:49 12 (Recess taken.)

05:17:49 13 THE COURT: Mr. Secor.

05:17:52 14 MR. SECOR: Ian Douglas.

05:17:53 15 MS. KELLEY: May we approach?

05:17:55 16 THE COURT: Sure.

05:17:56 17 (Whereupon the following discussion was had
05:18:51 18 at the bench outside the hearing of the jury:)

05:18:51 19 MS. KELLEY: Your Honor, insofar as Mr.
05:18:51 20 Douglas' name was never read to the jury in voir dire
05:18:51 21 for them to have an opportunity to say whether or not
05:18:51 22 they know him, could the government do it now?

05:18:51 23 THE COURT: What?

05:18:51 24 MS. KELLEY: Could Mr. Secor read Ian's name
05:18:51 25 to the jury just to make sure that no one knows him?

05:18:52 1 THE COURT: That's fair.

05:18:52 2 (End of side-bar discussion.)

05:18:55 3 THE COURT: Ladies and gentlemen, the
05:18:56 4 parties had read the list of witnesses to you for voir
05:19:02 5 dire. Do any of you recognize Mr. Douglas or know him
05:19:05 6 at all?

05:19:07 7 Okay.

05:19:09 8 (The witness was sworn by the clerk.)

05:19:30 9 THE COURT: Will you tell the ladies and
05:19:31 10 gentlemen your name, please.

05:19:32 11 THE WITNESS: I'm Ian Douglas.

05:19:34 12 THE COURT: What is your community of
05:19:36 13 residence?

05:19:36 14 THE WITNESS: Fredericktown, Ohio.

05:19:38 15 THE COURT: Are you living there now?

05:19:39 16 THE WITNESS: Yes.

05:19:42 17 THE COURT: Mr. Secor.

05:19:43 18 - - -

05:19:43 19 IAN DOUGLAS, DIRECT EXAMINATION

05:19:44 20 BY MR. SECOR:

05:19:44 21 Q. Mr. Douglas, are you presently employed?

05:19:47 22 A. Yes.

05:19:48 23 Q. How are you employed?

05:19:50 24 A. I'm a pipeliner, Pennsylvania.

05:19:55 25 THE COURT: A pipeliner?

05:19:58 1 THE WITNESS: Yeah. I work for a pipeline
05:20:01 2 company out of Bellevue, Ohio. We're currently working
05:20:04 3 in Pennsylvania.

05:20:05 4 Q. What do you do?

05:20:06 5 A. I'm a laborer.

05:20:07 6 Q. How long have you been employed in that capacity?

05:20:09 7 A. About three months.

05:20:14 8 Q. Do you know the defendant in this case, Alex
05:20:17 9 Cook?

05:20:17 10 A. Yes.

05:20:17 11 Q. How long have you been acquainted with him?

05:20:20 12 A. Since sophomore year of high school.

05:20:24 13 Q. Were you friends?

05:20:25 14 A. Yes.

05:20:26 15 Q. Did you have an occasion to rent an apartment
05:20:31 16 with him in Lima, Ohio?

05:20:32 17 A. Yes.

05:20:34 18 Q. Do you recall approximately when you began that
05:20:36 19 relationship?

05:20:39 20 A. It was about May.

05:20:41 21 Q. May of?

05:20:42 22 A. 2010.

05:20:47 23 Q. How did you and Mr. Cook meet?

05:20:49 24 A. Became friends in high school. We were in the
05:20:54 25 same classes together.

05:20:58 1 THE COURT: Can you perhaps move a little
05:20:59 2 closer to the microphone, please?

05:21:02 3 A. I met him -- we went to school together at the
05:21:06 4 Knox County Career Center, had the same class, building
05:21:10 5 trades. We just started hanging out from there.

05:21:13 6 Q. That's why you decided to room together; is that
05:21:17 7 right?

05:21:17 8 A. We decided to -- we both went to college up in
05:21:21 9 Lima and then decided -- I was driving back and forth at
05:21:24 10 the time. When he just chose to go there, we decided to
05:21:29 11 room together.

05:21:29 12 Q. Describe your apartment there.

05:21:31 13 A. It was a two-story townhouse. It wasn't the
05:21:36 14 best, but it was pretty good for a college student.
05:21:41 15 Downstairs was living room, kitchen, bathroom; and
05:21:45 16 upstairs was two bedrooms and a bathroom upstairs.

05:21:48 17 Q. So you each had your separate bedroom?

05:21:50 18 A. Yes.

05:21:51 19 Q. Now, did you each have a computer?

05:21:56 20 A. Yes.

05:21:57 21 Q. And how were they wired?

05:21:59 22 A. Wireless.

05:22:04 23 Q. Was your computer password protected?

05:22:07 24 A. Yes.

05:22:07 25 Q. How about Mr. Cook's?

05:22:08 1 A. I'm not sure.

05:22:13 2 Q. Did Mr. Cook ever give you his password?

05:22:16 3 A. No.

05:22:18 4 Q. Have you ever used his computer?

05:22:20 5 A. No.

05:22:23 6 Q. Now, directing your attention to September 15,
05:22:27 7 2010, do you remember that day?

05:22:30 8 A. Yes.

05:22:31 9 Q. Anything unusual happen that day?

05:22:33 10 A. The FBI came to our apartment about 6:30 in the
05:22:36 11 morning.

05:22:37 12 Q. And what happened?

05:22:38 13 A. They searched the place from top to bottom. We
05:22:49 14 got pulled outside, hands above our heads. From there
05:22:55 15 they just started searching.

05:23:00 16 Q. What was asked of you by any of the agents?

05:23:03 17 A. Can you repeat that, please?

05:23:04 18 Q. What did any of the agents ask you?

05:23:07 19 A. If I knew of anything about child pornography
05:23:11 20 online in the apartment.

05:23:12 21 Q. And what -- did you respond?

05:23:14 22 A. I asked them what they were talking about, and I
05:23:17 23 didn't know.

05:23:21 24 Q. Did anyone examine your computer?

05:23:23 25 A. Yes.

05:23:27 1 Q. Did the FBI take your computer thereafter?

05:23:29 2 A. No. They examined it there at the apartment.

05:23:33 3 Q. Then what happened with your computer?

05:23:34 4 A. They cleared it and it got left at the apartment.

05:23:38 5 Q. They left it with you?

05:23:39 6 A. Yes.

05:23:42 7 Q. Now, did Mr. Cook leave that day?

05:23:46 8 A. Yes.

05:23:47 9 Q. With whom did he leave?

05:23:48 10 A. I think two FBI agents. I don't recall, but I
05:23:53 11 know it was with FBI agents.

05:23:55 12 Q. Did you see him conversing with those agents?

05:23:58 13 A. Yes.

05:23:59 14 Q. Did they appear angry at Mr. Cook?

05:24:01 15 A. No.

05:24:10 16 Q. Do you know where they took Mr. Cook?

05:24:12 17 A. No, I don't.

05:24:13 18 Q. About how long was Mr. Cook gone?

05:24:17 19 A. Most of the morning. I went to class after they
05:24:23 20 released me to leave the premises, then when I got back
05:24:26 21 about 10:30, 11:00, they had just got back with Mr.
05:24:31 22 Cook.

05:24:35 23 Q. Did you ask him what was going on?

05:24:37 24 A. Yes.

05:24:40 25 Q. What did Mr. Cook tell you?

05:24:43 1 A. He said it had to do something --

05:24:48 2 THE COURT: I'm sorry. Can you lean a
05:24:50 3 little closer to the microphone and speak up.

05:24:52 4 A. He said it had something to do with identity
05:24:55 5 theft, and that was the last he told me.

05:25:00 6 Q. Did you believe him?

05:25:01 7 A. I was pretty shook up about it anyway.

05:25:07 8 Q. Why were you shook up?

05:25:09 9 A. It was awkward. I kind of felt violated.

05:25:13 10 Q. Why?

05:25:13 11 A. Because having my privacy taken, pretty much.

05:25:16 12 Q. Were you angry?

05:25:17 13 A. No. I was just confused, lost.

05:25:25 14 Q. Now, did your relationship with Mr. Cook change
05:25:28 15 after that date?

05:25:29 16 A. Yes.

05:25:30 17 Q. It did?

05:25:31 18 A. Yes.

05:25:32 19 Q. How so and why?

05:25:34 20 A. It was just very distant between both of us. We
05:25:39 21 didn't communicate like we used to. That's about it.
05:25:47 22 We didn't hang out as much. That's about it.

05:25:56 23 Q. Did you -- have you ever downloaded child
05:26:00 24 pornography?

05:26:00 25 A. No.

05:26:05 1 Q. Do you see Mr. Cook in court today?

05:26:07 2 A. Yes, I do.

05:26:08 3 Q. Can you indicate where he's seated and what he's
05:26:11 4 wearing for the record?

05:26:12 5 A. Can you repeat that, please.

05:26:13 6 Q. Can you indicate where he's seated and what he's
05:26:16 7 wearing for the record?

05:26:17 8 A. He's seated to the right side of the room --
05:26:20 9 well, it would be the left side. He's wearing a black
05:26:25 10 shirt and a gray suit.

05:26:28 11 MR. SECOR: Your Honor, may the record
05:26:32 12 reflect --

05:26:32 13 THE COURT: It does.

05:26:33 14 MR. SECOR: Thank you.

05:26:34 15 BY MR. SECOR:

05:26:37 16 Q. Have you had an occasion to speak with Mr. Cook
05:26:41 17 since you left the apartment?

05:26:43 18 A. No.

05:26:54 19 Q. When did you leave the apartment?

05:26:57 20 A. Sometime in December I moved out.

05:27:02 21 Q. And what was the reason?

05:27:04 22 A. I was just -- I was by myself at that point in
05:27:08 23 the apartment. He had been arrested and charged. I was
05:27:16 24 by myself.

05:27:19 25 Q. Did you talk to him about that?

05:27:21 1 A. No, I didn't.

05:27:24 2 Q. Didn't ask him about it?

05:27:25 3 A. No.

05:27:31 4 MR. SECOR: Thank you. I have nothing
05:27:32 5 further, Your Honor.

05:27:35 6 MS. KELLEY: Thank you, Your Honor.

05:27:37 7 - - -

05:27:37 8 IAN DOUGLAS, CROSS-EXAMINATION

05:27:37 9 BY MS. KELLEY:

05:27:37 10 Q. Hello, Ian. It's nice to meet you. I'm
05:27:44 11 Elizabeth Kelley. I represent Alex.

05:27:47 12 Isn't it true that you had three computers
05:27:50 13 between May and September of 2010?

05:27:53 14 A. Yes.

05:27:54 15 Q. You had a Dell, didn't you?

05:27:56 16 A. Yes.

05:27:57 17 Q. And you had a Verizon notebook?

05:28:02 18 A. Yes.

05:28:03 19 Q. Then you acquired a new one?

05:28:04 20 A. Yes.

05:28:05 21 Q. And when you moved into Alex's apartment with
05:28:10 22 him, you didn't have a computer initially, did you?

05:28:13 23 A. I had the Verizon netbook.

05:28:15 24 Q. But you used to use Alex's computer, didn't you?

05:28:19 25 A. No.

05:28:19 1 Q. You were the one who gave Alex his password,
05:28:23 2 isn't that correct?

05:28:24 3 A. No.

05:28:25 4 Q. And your password is GMC boy 1990, isn't it?

05:28:30 5 A. No.

05:28:31 6 Q. And you gave that password to Alex so he could
05:28:34 7 use your computer, didn't you?

05:28:36 8 A. No.

05:28:36 9 Q. You guys used to share everything in that
05:28:38 10 apartment, didn't you?

05:28:40 11 A. No.

05:28:40 12 Q. In fact, when you first moved into the apartment
05:28:43 13 it was Alex's parents, Jerry and Eva, who furnished it,
05:28:47 14 wasn't it?

05:28:48 15 A. No.

05:28:48 16 Q. They bought you guys food, didn't they?

05:28:51 17 A. Yes.

05:28:51 18 Q. That first weekend when they were home they
05:28:54 19 filled up your refrigerator, didn't they?

05:28:56 20 A. Yes.

05:28:57 21 Q. And they filled up your cupboards?

05:28:59 22 A. Yes.

05:28:59 23 Q. And you used to eat that food, didn't you?

05:29:02 24 A. Yes.

05:29:02 25 Q. And you used to wear Alex's clothing, right?

05:29:05 1 A. No.

05:29:05 2 Q. And he used to wear your clothing, didn't he?

05:29:08 3 A. No.

05:29:08 4 Q. You guys shared everything?

05:29:10 5 A. No.

05:29:10 6 Q. All right. Now, when you left the house or when
05:29:17 7 you left the apartment in September, you left Alex with
05:29:22 8 a stack of bills, didn't you?

05:29:23 9 A. I didn't leave in September.

05:29:25 10 Q. And you've never repaid those bills, have you?

05:29:27 11 A. I never left in September.

05:29:30 12 Q. You left, didn't you?

05:29:32 13 A. In December.

05:29:34 14 Q. When are you planning on paying Alex back for
05:29:37 15 that back rent?

05:29:39 16 A. What back rent? My rent was paid up.

05:29:43 17 Q. Now, you've had a number of different cell phones
05:29:45 18 during the past few months, haven't you?

05:29:47 19 A. Just two.

05:29:48 20 Q. It's been difficult to get a hold of you by cell
05:29:51 21 phone, hasn't it?

05:29:52 22 A. No.

05:29:52 23 Q. Because you've changed cell phone numbers so many
05:29:55 24 times?

05:29:55 25 A. I've only changed my cell phone twice.

05:29:58 1 Q. Are you here willingly today?

05:30:00 2 A. Yes.

05:30:01 3 Q. But didn't you receive a subpoena?

05:30:03 4 A. Yes.

05:30:05 5 Q. Now, when we heard testimony a couple of days ago
05:30:13 6 from Special Agent Schulte -- do you know him?

05:30:17 7 A. Yes.

05:30:18 8 Q. He told us that he had performed surveillance on
05:30:26 9 your apartment complex five times during the month of
05:30:31 10 September. Would that seem accurate?

05:30:35 11 A. Yes.

05:30:37 12 Q. Okay. And your apartment at 1268 Knollwood, that
05:30:41 13 was primarily -- well, some college students lived
05:30:46 14 there, didn't they?

05:30:47 15 A. Yes.

05:30:48 16 Q. And primarily trucks park there, correct?

05:30:50 17 A. Yes.

05:30:51 18 Q. So an undercover vehicle would stick out,
05:30:54 19 wouldn't it?

05:30:54 20 A. There was cars coming in all the time. So, I
05:30:58 21 mean, but probably, yes.

05:31:03 22 Q. Now, in September you didn't have a job, did you?

05:31:06 23 A. I just started working at my neighbor's gas
05:31:10 24 station back home.

05:31:11 25 Q. In September?

05:31:12 1 A. Yes.

05:31:12 2 Q. And you were going to school half time, correct?

05:31:14 3 A. Yes.

05:31:16 4 Q. So you were at home during the day?

05:31:19 5 A. Yes.

05:31:20 6 Q. And you were home at night?

05:31:21 7 A. Yes.

05:31:22 8 Q. And you were there most of the weekends, weren't
05:31:24 9 you?

05:31:24 10 A. No.

05:31:25 11 Q. You weren't?

05:31:25 12 A. No.

05:31:26 13 Q. Okay. Do you know Jerry Cook, Alex's father?

05:31:31 14 A. Yes.

05:31:32 15 Q. And do you find him to be an honorable man?

05:31:39 16 A. Yes.

05:31:40 17 Q. He testified today that he saw you using Alex's
05:31:44 18 computer. Would he be lying if he said that?

05:31:49 19 A. Yes.

05:31:58 20 MS. KELLEY: Could I have a moment, Your
05:32:00 21 Honor?

05:32:00 22 THE COURT: Of course.

05:32:04 23 (Discussion had off the record.)

05:32:07 24 BY MS. KELLEY:

05:32:09 25 Q. Have you been offered anything for your testimony

05:32:11 1 today?

05:32:11 2 A. No.

05:32:11 3 Q. Have you been threatened in any way?

05:32:13 4 A. No.

05:32:13 5 Q. And you're here willingly?

05:32:15 6 A. Yes.

05:32:16 7 MS. KELLEY: All right. Thank you.

05:32:18 8 THE COURT: Mr. Secor?

05:32:22 9 MR. SECOR: No questions, Your Honor.

05:32:23 10 THE COURT: You may step down. You're free
05:32:25 11 to go or welcome to stay; it's entirely up to you.

05:32:45 12 Any further witnesses?

05:32:48 13 MR. SECOR: Yes, Your Honor. Special Agent
05:32:49 14 Paul Pape.

05:33:05 15 THE COURT: You've previously been sworn and
05:33:08 16 remain under oath.

05:33:10 17 - - -

05:33:10 18 PAUL PAPE, DIRECT EXAMINATION

05:33:11 19 BY MR. SECOR:

05:33:11 20 Q. Special Agent Pape, there was some testimony in
05:33:20 21 court today that when you took the statement from Mr.
05:33:31 22 Cook and reduced it to a summary writing and asked Mr.
05:33:39 23 Cook to sign it, that you told him it was nothing more
05:33:44 24 than a letter to the prosecutor not to follow up on this
05:33:51 25 case. Did you ever do that?

05:33:53 1 A. No.

05:33:56 2 Q. In fact, how long have you been a police officer?

05:33:59 3 A. I've been with the FBI 14 years, and seven years
05:34:02 4 prior to that with the State Highway Patrol.

05:34:03 5 Q. How many times have you written a prosecutor on
05:34:08 6 any case and told them they should not pursue that case?

05:34:11 7 A. Never.

05:34:17 8 Q. We further heard testimony today and yesterday
05:34:23 9 that for three to four hours at the Lima RA with Mr.
05:34:30 10 Cook you used a raised voice and called him numerous
05:34:37 11 names such as idiot in order to convince him to speak to
05:34:44 12 you. Is that true?

05:34:46 13 A. Not at all.

05:34:48 14 Q. Have you ever done such a thing?

05:34:50 15 A. No. Not at all. My mannerism in conducting
05:34:54 16 interviews is the mannerism you see in here; matter of
05:35:00 17 fact and to the point.

05:35:03 18 Q. Now, you also testified that you were at the
05:35:07 19 apartment when the search began; is that correct?

05:35:11 20 A. That's correct.

05:35:12 21 Q. In fact you had an occasion to come into contact
05:35:15 22 with Mr. Cook; isn't that correct?

05:35:17 23 A. It is.

05:35:18 24 Q. You had an occasion to have a conversation with
05:35:21 25 Mr. Cook; isn't that correct?

05:35:22 1 A. That is.

05:35:23 2 Q. And what was the essence of that conversation?

05:35:26 3 A. I told Mr. Cook why we were there, that the FBI
05:35:30 4 was conducting a search warrant for child pornography
05:35:34 5 possession, that the FBI doesn't come to your house on a
05:35:37 6 hunch. We have very good information that there is
05:35:39 7 child pornography on his computer. I told him that we
05:35:44 8 were going to seize his computer and analyze it to find
05:35:50 9 child pornography. I asked him -- at that point we had
05:35:52 10 come in the house from the outside. We were in his
05:35:55 11 living room. And I asked him if he had child
05:35:58 12 pornography on his computer. And he said he did. I
05:36:00 13 asked him where his computer was. He said it was
05:36:03 14 upstairs in his room. At that time we went upstairs to
05:36:05 15 his room. As I testified yesterday, he put on clothing
05:36:12 16 because he only had his shorts on. The computer was in
05:36:15 17 the room. And the people collecting that computer
05:36:18 18 collected it.

05:36:21 19 Q. Did Mr. Cook during that conversation or at any
05:36:26 20 later conversation ever indicate to you that Ian Douglas
05:36:32 21 had access to his computer?

05:36:34 22 A. No, he did not.

05:36:42 23 Q. Now, you testified yesterday that one of the
05:36:49 24 reasons that you did not tape this conversation which
05:36:53 25 you had with Mr. Cook was because you didn't have a tape

05:36:57 1 recorder. Do you recall that?

05:36:59 2 A. I do.

05:37:00 3 Q. Was there any other reason besides that that you
05:37:05 4 did not tape this conversation?

05:37:08 5 A. There is.

05:37:09 6 Q. What is that reason?

05:37:10 7 A. That reason is the FBI policy and procedure says
05:37:15 8 that we don't audio or videotape our interviews. I
05:37:18 9 follow FBI policy and procedure by conducting the
05:37:23 10 interview, then reducing that to writing in a summary
05:37:26 11 form to identify what the interview was about. That's
05:37:29 12 FBI policy.

05:37:30 13 Q. There is an exception to that policy; is there
05:37:33 14 not?

05:37:34 15 THE COURT: Was that exception in place at
05:37:35 16 the time of this interview, if there is an exception?

05:37:41 17 MR. SECOR: I'll get there.

05:37:43 18 THE COURT: Well, was there an exception in
05:37:45 19 place at the time?

05:37:46 20 BY MR. SECOR:

05:37:46 21 Q. Was there an exception in place at the time of
05:37:49 22 this interview in order to tape an interviewee?

05:37:53 23 A. In FBI policy, yes, there is an exception.

05:37:57 24 Q. What is that exception?

05:37:58 25 A. On very rare occasions we can get authorization

05:38:02 1 prior to the interview from our Special Agent in Charge.

05:38:06 2 Q. Now, who was the Special Agent in Charge?

05:38:11 3 A. At that time Special Agent in Charge would have
05:38:14 4 been SAC Figliuzzi. He's out of Cleveland.

05:38:19 5 Q. So your -- you affectionately refer to your
05:38:23 6 supervisor in charge as what?

05:38:25 7 A. The SAC.

05:38:27 8 Q. The SAC. Where is he on the totem pole as far as
05:38:34 9 rank, so to speak, in the Cleveland office?

05:38:37 10 A. The SAC is the top of the Cleveland office. He
05:38:41 11 is in charge of the entire division of the FBI for the
05:38:45 12 Cleveland Division, which is half of the State of Ohio.

05:38:48 13 Q. Now, what would the procedure have been in order
05:38:51 14 to get his approval?

05:38:53 15 A. Prior to the interview we would have had to write
05:38:57 16 a communication to him requesting authorization to audio
05:39:01 17 or videotape the interview, and we would have had to
05:39:04 18 justify why we would need to get an exception to FBI
05:39:08 19 policy to do that.

05:39:11 20 Q. Now, would that communication go directly from
05:39:14 21 you to your SAC, or would it have to go through your
05:39:19 22 supervisor?

05:39:20 23 A. It would first go through our supervisor. Then
05:39:23 24 it would go through the Assistant Special Agent in
05:39:26 25 Charge. Then it would go to the Special Agent.

05:39:29 1 Q. How long would that take?

05:39:31 2 A. Depending on if the SAC was available, if he was
05:39:37 3 in the division, it could take anywhere from a couple
05:39:40 4 days to a week.

05:39:43 5 Q. In the meantime you've got an individual you're
05:39:48 6 investigating. Are you supposed to just let him go then
05:39:53 7 and then come back several days later?

05:39:55 8 A. No. Again, that's a very rare exception to the
05:39:58 9 FBI policy.

05:39:59 10 Q. How often do you use that exception?

05:40:01 11 A. I've never used that exception. And I've
05:40:04 12 interviewed serial killers, bank robbers, kidnap
05:40:09 13 suspects, all high profile matters that I've
05:40:12 14 investigated. I've never sought SAC approval to conduct
05:40:17 15 audio/videotaped interviews.

05:40:23 16 Q. But a lot of police agencies do conduct video and
05:40:29 17 audio surveillance of their interviews, don't they?

05:40:34 18 A. They do. It's an individual department policy.

05:40:41 19 Q. If you know, does the Highway Patrol do it?

05:40:45 20 A. At the time I was a trooper, they did not. But I
05:40:47 21 don't know as to current day if they do or not.

05:40:55 22 Q. If you know, is the policy undergoing review?

05:41:05 23 A. The policy is constantly being reviewed, just as
05:41:10 24 other policies with the FBI are. Those that are at a
05:41:13 25 very -- bigger pay raise than I am make those decisions,

05:41:18 1 and they constantly review policy and procedure,
05:41:21 2 everything to make sure they are where they need to be
05:41:24 3 for the betterment of the mission. This policy is no
05:41:27 4 exception.

05:41:37 5 MR. SECOR: Nothing further, Your Honor.

05:41:42 6 - - -

05:41:42 7 PAUL PAPE, CROSS-EXAMINATION

05:41:42 8 BY MS. KELLEY:

05:41:42 9 Q. Thank you. Good afternoon, sir.

05:42:02 10 A. Good afternoon.

05:42:03 11 Q. Let's talk about this confession, supposed
05:42:05 12 confession. I understand that you do not set FBI
05:42:07 13 policy. But did I understand you correctly when you
05:42:13 14 told Mr. Secor that it would take a couple of days to a
05:42:17 15 week in order to get approval to record an
05:42:22 16 interrogation?

05:42:24 17 A. Depending on factors of availability, yes, ma'am.

05:42:28 18 Q. Isn't it true that your first correspondence from
05:42:32 19 Special Agent Whisman, the gentleman in Oklahoma
05:42:36 20 conducting the undercover operation, was on June 23 of
05:42:42 21 2010?

05:42:44 22 A. I didn't have contact with him.

05:42:47 23 Q. Isn't it true he produced his first 302 in the
05:42:50 24 case in June of 2010?

05:42:55 25 A. I don't have that document.

05:42:57 1 THE COURT: If you were told that that was
05:42:59 2 the case, would you dispute that?

05:43:04 3 THE WITNESS: If you told me that was the
05:43:06 4 case, I wouldn't disagree with you.

05:43:08 5 THE COURT: Well, if you were told.

05:43:13 6 BY MS. KELLEY:

05:43:13 7 Q. Would you be surprised to know that Special Agent
05:43:15 8 Whisman completed his 302 in regards to the initial
05:43:22 9 investigation of this alleged crime on June 23 of 2010?

05:43:30 10 A. I don't believe that would be out of the ordinary
05:43:33 11 for time issues.

05:43:34 12 Q. Okay. That was in June. Fast forward. You and
05:43:42 13 your office -- strike that.

05:43:44 14 Your office participated in five undercover
05:43:48 15 surveillances of Alex and Ian's apartment, correct?

05:43:55 16 A. I don't know that information either.

05:43:57 17 Q. If Agent Schulte testified to that the other day,
05:44:00 18 would he be correct or incorrect?

05:44:03 19 A. If that was his testimony.

05:44:10 20 Q. Would it be correct -- would Agent Schulte be
05:44:12 21 correct to say that he began that undercover
05:44:15 22 surveillance the first part of September?

05:44:20 23 A. If that was --

05:44:21 24 MR. SECOR: Objection, Your Honor, unless
05:44:22 25 she shows a basis for his knowledge of what Special

05:44:25 1 Agent Schulte was doing.

05:44:26 2 THE COURT: I think that's fair.

05:44:27 3 MS. KELLEY: All right.

05:44:28 4 Q. Did you participate in any of these undercover
05:44:31 5 surveillances in the parking lot?

05:44:32 6 A. I did not.

05:44:33 7 Q. And the search was executed on a morning in late
05:44:41 8 September, correct?

05:44:42 9 A. Correct.

05:44:43 10 Q. September 15, in fact, wasn't it?

05:44:45 11 A. That is.

05:44:47 12 Q. So between June and September, we have
05:44:51 13 approximately three months, correct?

05:44:54 14 A. Yes.

05:44:57 15 Q. Now, during that three-month time period, could
05:45:04 16 you have made the effort to get permission to record
05:45:09 17 this interrogation?

05:45:13 18 A. It's not the effort.

05:45:15 19 Q. That's not what I'm asking.

05:45:16 20 A. Yes, you did.

05:45:18 21 Q. Could you -- could you have tried to ask for
05:45:23 22 special permission?

05:45:23 23 A. We could have.

05:45:24 24 Q. All right. But you didn't, did you?

05:45:26 25 A. No.

05:45:27 1 Q. All right. So the fact remains, the only record
05:45:34 2 we have of what supposedly transpired in that
05:45:39 3 interrogation room is your written statement, which Alex
05:45:44 4 signed, correct?

05:45:45 5 A. That's correct.

05:45:46 6 Q. And you stand by that statement?

05:45:49 7 A. 100 percent.

05:45:50 8 Q. You stand by the statement that Alex told you he
05:45:54 9 was molested as an 11 year old Boy Scout?

05:45:57 10 A. That's what he told me.

05:45:58 11 Q. You stand by the statement that Alex teaches
05:46:02 12 Sunday school?

05:46:04 13 A. Yes.

05:46:05 14 Q. You stand by the statement that Alex told you he
05:46:09 15 has a fiancée?

05:46:11 16 A. I believe it's an ex-fiancée.

05:46:15 17 Q. An ex-fiancée.

05:46:23 18 And you stand by his statement that he began
05:46:25 19 viewing child pornography, an illegal subject, when he
05:46:33 20 was on the road doing construction?

05:46:36 21 A. Correct.

05:46:37 22 Q. And that predates the initial undercover
05:46:41 23 operation of Special Agent Whisman in Oklahoma, doesn't
05:46:46 24 it?

05:46:48 25 A. Yes, it was before that date.

05:46:51 1 Q. And prior to this time law enforcement had had no
05:46:56 2 contact whatsoever with Alex but for a couple of traffic
05:47:01 3 tickets, correct?

05:47:03 4 A. Not to my knowledge.

05:47:04 5 Q. So even though he's supposedly looking at child
05:47:09 6 pornography someplace out on the road doing
05:47:11 7 construction, the federal government with all its
05:47:13 8 resources has no record of it?

05:47:19 9 A. Not to my knowledge.

05:47:21 10 Q. And he'd been on the road doing construction for
05:47:25 11 about ten months, and you didn't have any record of it?

05:47:31 12 A. Not to my knowledge.

05:47:34 13 Q. So Agent Whisman sitting in Oklahoma in June
05:47:40 14 finds out that there is child pornography related
05:47:47 15 activity going on in an apartment in Fredericktown?

05:47:53 16 MR. SECOR: Objection, Your Honor. He
05:47:55 17 didn't find out that information then.

05:47:58 18 MS. KELLEY: Could I approach the witness,
05:47:59 19 Your Honor?

05:47:59 20 THE COURT: Sure. In any event, I think it
05:48:02 21 was Lima rather than Fredericktown, I believe.

05:48:04 22 MS. KELLEY: You're correct. Thank you.

05:48:07 23 THE COURT: But there is an objection to the
05:48:09 24 question. And the objection again, Mr. Secor, was?

05:48:13 25 MR. SECOR: The question had --

05:48:16 1 THE COURT: Let's come up here.

05:48:18 2 (Whereupon the following discussion was had
05:50:01 3 at the bench outside the hearing of the jury:)

05:50:01 4 MR. SECOR: The question had incorrect facts
05:50:01 5 in it that have not been adduced in the trial. If you'd
05:50:01 6 like to read it back.

05:50:01 7 MS. KELLEY: Agent Whisman testified that he
05:50:01 8 began and concluded his undercover operation on June 22
05:50:01 9 of 2010.

05:50:01 10 MR. SECOR: That's not so.

05:50:01 11 MS. KELLEY: We have a 302.

05:50:03 12 MR. SECOR: That's when he started it. But
05:50:03 13 then he issued a subpoena to get the IP address, and
05:50:03 14 eventually he got the IP address. All this took a
05:50:03 15 period of time. So if she wants to do it that way,
05:50:03 16 that's fine, but don't make it sound like he started and
05:50:03 17 concluded.

05:50:03 18 THE COURT: I'm not sure that he would know
05:50:03 19 these facts anyway.

05:50:03 20 MR. SECOR: Well, she's making it sound like
05:50:03 21 he did his whole investigation on that day.

05:50:03 22 MS. KELLEY: I can rephrase.

05:50:03 23 THE COURT: Well, but he's not the case
05:50:03 24 agent.

05:50:03 25 MR. SECOR: That's true.

05:50:04 1 THE COURT: I assume he was called in Lima as
05:50:04 2 part of the search team and to conduct the
05:50:04 3 interrogation.

05:50:04 4 MR. SECOR: Exactly.

05:50:04 5 MS. KELLEY: I can rephrase. It's not a big
05:50:04 6 deal.

05:50:04 7 (End of sidebar discussion.)

05:50:04 8 THE COURT: You may continue. Rephrase the
05:50:04 9 question.

05:50:04 10 MS. KELLEY: I forgot where I was.

05:50:05 11 BY MS. KELLEY:

05:50:05 12 Q. If you know, when did this investigation begin?

05:50:08 13 A. I don't know.

05:50:09 14 Q. All right. And I want to go back to the
05:50:17 15 interrogation room. So the only record we have of this
05:50:24 16 is that statement which you drafted on behalf of Alex,
05:50:28 17 correct?

05:50:30 18 A. Yes.

05:50:36 19 Q. And you stand by that statement still 100
05:50:39 20 percent?

05:50:39 21 A. I do.

05:50:44 22 Q. Now, Mr. Secor asked you if Alex had made any
05:50:56 23 statements to you outside the apartment while the search
05:51:01 24 was being conducted. Do you recall that question?

05:51:09 25 A. Today?

05:51:10 1 Q. Today.

05:51:10 2 A. I don't think he said outside the apartment. At
05:51:13 3 the apartment.

05:51:14 4 Q. Okay. Did Alex make any statements to you at the
05:51:17 5 apartment?

05:51:17 6 A. Yes.

05:51:18 7 Q. About viewing child pornography?

05:51:19 8 A. Yes.

05:51:20 9 Q. Did you record those in any fashion?

05:51:22 10 A. No.

05:51:24 11 Q. You completed a 302 in regards to the initial
05:51:31 12 search, didn't you?

05:51:32 13 A. No, I did not.

05:51:33 14 Q. You didn't? Could I approach the witness?

05:51:36 15 THE COURT: You may. If you want to show
05:51:41 16 him something, have it marked as an exhibit, please,
05:51:45 17 unless it has been marked already.

05:51:48 18 MS. KELLEY: I don't think it's been marked.

05:51:52 19 (Discussion had off the record.)

05:51:58 20 THE COURT: While we're doing that, what is
05:52:00 21 a, quote, "302," close quote.

05:52:03 22 THE WITNESS: A 302 is a document that we
05:52:08 23 document things on. It's just a -- 302 is the number
05:52:14 24 system that we have. It says this is a paper that's
05:52:18 25 documented information on.

05:52:19 1 THE COURT: It's basically the form that you
05:52:21 2 use to record various activities; is that correct?

05:52:27 3 THE WITNESS: That is, yeah.

05:52:28 4 THE COURT: And as far as I'm aware, no one
05:52:31 5 knows how come it's a 302 rather than 121.

05:52:37 6 THE WITNESS: That is correct.

05:52:38 7 THE COURT: Anyway, you've heard 302, ladies
05:52:40 8 and gentlemen. That's lawyers' and so forth's shorthand
05:52:43 9 for simply the name of the piece of paper on which the
05:52:47 10 FBI agents record activities and investigations and
05:52:51 11 otherwise.

05:52:51 12 So go ahead.

05:52:52 13 MS. KELLEY: Thank you. May I approach the
05:52:55 14 witness, Your Honor?

05:52:55 15 THE COURT: Certainly.

05:52:56 16 BY MS. KELLEY:

05:52:57 17 Q. Sir, I'm handing you what's been marked as
05:52:59 18 Defendant's Exhibit 117. Do you recognize that
05:53:02 19 document?

05:53:18 20 A. I do.

05:53:20 21 Q. Could you tell the jury what that is?

05:53:23 22 A. It's a 302 of the -- of Alex Cook, and it appears
05:53:34 23 to be talking about the silver thumb drive.

05:53:39 24 Q. Is your name at the bottom of that document?

05:53:41 25 A. It is.

05:53:41 1 Q. And is anyone else's name at the bottom of that
05:53:45 2 document?

05:53:45 3 A. Agent Schulte.

05:53:48 4 Q. Is there any mention in that entire 302 of Alex
05:53:56 5 Cook telling you that he has child pornography on his
05:54:00 6 computer?

05:54:03 7 A. No, but I didn't write this document.

05:54:07 8 Q. You didn't write that document?

05:54:08 9 A. No. Agent Schulte --

05:54:10 10 Q. But you signed on to it?

05:54:11 11 A. Yes.

05:54:11 12 Q. But nonetheless, there is no mention of Alex
05:54:16 13 telling you that there is child pornography on his
05:54:20 14 computer, is there?

05:54:21 15 A. Not on this document, no.

05:54:22 16 Q. Not on that document. Did you put it in any
05:54:27 17 other documents other than the confession?

05:54:30 18 A. I did.

05:54:31 19 Q. Really. Which one?

05:54:32 20 A. The 498.

05:54:34 21 Q. And what is that?

05:54:42 22 MR. SECOR: Go ahead.

05:54:44 23 THE WITNESS: What's a 498?

05:54:46 24 MS. KELLEY: Yeah.

05:54:48 25 MR. SECOR: Sidebar.

05:54:50 1 (Whereupon the following discussion was had
05:55:53 2 at the bench outside the hearing of the jury:)

05:55:53 3 MR. SECOR: Well, Judge, I've done
05:55:53 4 everything with these people to instruct them not to get
05:55:53 5 into the polygraph.

05:55:53 6 THE COURT: What is it?

05:55:53 7 MR. SECOR: The 498 is the polygraph. It's
05:55:53 8 opened.

05:55:53 9 MS. KELLEY: I did not know what it was.

05:55:53 10 MR. SECOR: You had a copy of it.

05:55:53 11 MS. KELLEY: I don't memorize numbers.

05:55:54 12 MR. SECOR: Judge the question is in front
05:55:54 13 of the jury now.

05:55:54 14 THE COURT: If she wants to withdraw, I'm
05:55:54 15 going to let her withdraw it.

05:55:54 16 MS. KELLEY: If I don't know what a 498 is,
05:55:54 17 they don't know what a 498 is.

05:55:56 18 (End of side-bar discussion.)

05:56:01 19 MR. SECOR: Is that question withdrawn?

05:56:02 20 MS. KELLEY: It's withdrawn. Thank you.

05:56:05 21 BY MS. KELLEY:

05:56:06 22 Q. Now, Mr. Secor asked you if you told Mr. Cook
05:56:17 23 that this was a letter to the prosecutor. Do you recall
05:56:20 24 that question?

05:56:21 25 A. Yes.

05:56:23 1 Q. And you testified that you didn't say that,
05:56:27 2 correct?

05:56:27 3 A. That's correct.

05:56:30 4 Q. And you also testified that you never lied to
05:56:33 5 Alex, correct?

05:56:36 6 A. Did I lie to Alex?

05:56:39 7 Q. You testified that you never lied to Alex?

05:56:41 8 A. That I never lied to Alex, correct. I don't know
05:56:44 9 if I testified to that, but to --

05:56:46 10 Q. Did you ever lie to Alex?

05:56:47 11 A. No.

05:56:48 12 Q. Just out of curiosity, isn't law enforcement
05:56:51 13 allowed to lie to suspects?

05:56:53 14 A. Yes.

05:57:02 15 Q. Now, final question for you, and this goes back
05:57:05 16 to the recording or the non-recording of the confession.
05:57:11 17 You stated that the non-recording policy is under
05:57:18 18 review. Would that be accurate?

05:57:21 19 A. All policies are constantly under review.

05:57:24 20 Q. Okay. And given the date of Alex's
05:57:31 21 interrogation, he might not be able to be subject to a
05:57:41 22 tape recorded interrogation, correct?

05:57:44 23 A. I don't understand your question on that.

05:57:46 24 Q. So given the Bureau's policy at this point,
05:57:53 25 Alex's confession was not recorded, correct?

05:57:57 1 A. It was recorded.

05:57:59 2 Q. It was recorded?

05:58:00 3 A. It was recorded on my statement form.

05:58:02 4 Q. But was it audio recorded?

05:58:04 5 A. It's not audio recorded.

05:58:06 6 Q. Was it video recorded?

05:58:07 7 A. No, it's not.

05:58:08 8 Q. But fast forward. Given the evolving standards
05:58:14 9 of decency within the FBI, or the evolving standards,
05:58:19 10 strike that, within the FBI, an interrogation like
05:58:22 11 Alex's might one day be audio recorded, correct?

05:58:26 12 MR. SECOR: Objection, Your Honor. It's
05:58:28 13 entirely speculative.

05:58:30 14 THE COURT: I would agree.

05:58:31 15 MS. KELLEY: Thank you. No more questions.

05:58:41 16 MR. SECOR: No questions, Your Honor.

05:58:47 17 THE COURT: You may step down.

05:58:58 18 MR. CRAWFORD: Special Agent Schulte.

05:59:05 19 THE COURT: Agent, you've been previously
05:59:08 20 sworn. You remain under oath.

05:59:10 21 THE WITNESS: Yes, Your Honor.

05:59:12 22 - - -

05:59:12 23 CRAIG SCHULTE, DIRECT EXAMINATION

05:59:13 24 BY MR. CRAWFORD:

05:59:13 25 Q. Agent Schulte, you were part of the search

05:59:17 1 warrant team that conducted a search at Knollwood in
05:59:22 2 September of 2010?

05:59:23 3 A. That's correct.

05:59:24 4 Q. Was one of your jobs, one of your assignments
05:59:27 5 that day to speak with Ian Douglas?

05:59:29 6 A. It was.

05:59:29 7 Q. And you were -- what were you trying to do in
05:59:35 8 terms of investigating Mr. Douglas?

05:59:37 9 A. It was my intention to try to quickly assess
05:59:42 10 which direction the investigation should go, try to
05:59:48 11 identify a likely suspect.

05:59:50 12 Q. And what steps did you or did the team take to
05:59:54 13 either confirm or dispel the notion that Mr. Douglas may
06:00:00 14 have been involved in possessing child pornography?

06:00:02 15 A. I spoke with Mr. Douglas and asked him various
06:00:05 16 questions about his computer usage, if he had any
06:00:10 17 knowledge of child pornography, whether it be on his
06:00:16 18 computer or anybody else's electronic devices inside the
06:00:19 19 apartment. Special Agent Steven Smith was with me when
06:00:23 20 I was asking Mr. Douglas those questions, and Special
06:00:29 21 Agent Smith conveyed to me that he could do an on-site
06:00:33 22 scan of Mr. Douglas' computer to verify if his statement
06:00:37 23 was correct.

06:00:38 24 Q. First, what did you learn from your questioning
06:00:40 25 of Mr. Douglas that assisted you in making your

06:00:43 1 evaluation of him?

06:00:44 2 A. Mr. Douglas told me that he was not aware of any
06:00:48 3 child pornography inside the apartment at all. He
06:00:51 4 seemed very surprised. He -- in fact, I did not
06:00:54 5 initially offer the fact that we were there for child
06:00:58 6 pornography. I offered him the opportunity to volunteer
06:01:01 7 anything that he thought would be in the interest of the
06:01:04 8 FBI and why we would be there. Mr. Douglas was at a
06:01:07 9 loss. Mr. Douglas added that once I told him that we
06:01:10 10 were looking for child pornography --

06:01:12 11 THE COURT: I assume this testimony is
06:01:15 12 offered only as proof that the statements were made by
06:01:18 13 Mr. Douglas and not for their truth; is that correct?

06:01:21 14 MR. CRAWFORD: Your Honor, the purpose of the
06:01:22 15 testimony is on cross-examination during our case in
06:01:25 16 chief, Agent Schulte was asked a number of questions
06:01:27 17 about why he took certain steps.

06:01:29 18 THE COURT: I understand. But I'm asking
06:01:31 19 about the weight the jury can give to the statements
06:01:35 20 attributed to Mr. Douglas.

06:01:37 21 MR. CRAWFORD: Through this witness, yes,
06:01:39 22 Your Honor.

06:01:39 23 THE COURT: I don't believe they're
06:01:40 24 admissible for the truth of what he was saying, simply
06:01:44 25 for the fact that he made those statements; is that

06:01:49 1 correct?

06:01:49 2 MR. CRAWFORD: He made those statements, and
06:01:52 3 its effect on Mr. Schulte and his actions.

06:01:55 4 THE COURT: They're not proof or whether or
06:01:57 5 not Mr. Douglas had child pornography on his computer or
06:02:00 6 knew of it on the defendant's computer.

06:02:02 7 MR. CRAWFORD: Not admissible for that
06:02:03 8 purpose.

06:02:04 9 THE COURT: You're just testifying what he
06:02:06 10 said rather than whether it's true or not. So the jury
06:02:09 11 will consider this testimony just for that aspect and
06:02:13 12 not for the truth of the matter asserted.

06:02:16 13 Go ahead, Mr. Crawford.

06:02:17 14 BY MR. CRAWFORD:

06:02:18 15 Q. Agent Schulte, did Agent Smith conduct a scan of
06:02:22 16 Mr. Douglas' computer?

06:02:23 17 A. Yes, he did.

06:02:24 18 Q. Did you learn the results of that scan?

06:02:26 19 A. I did.

06:02:27 20 Q. And what were those results?

06:02:28 21 A. Those results were that Special Agent Smith could
06:02:31 22 not find any evidence of child pornography on Ian
06:02:34 23 Douglas' computer to include the search terms, still
06:02:38 24 images, or movie files.

06:02:41 25 Q. At the time you were speaking with Mr. Douglas,

06:02:44 1 was somebody else speaking with Mr. Cook?

06:02:46 2 A. Yes, I believe Special Agent Pape was.

06:02:49 3 Q. Okay. At some point in time did Special Agent
06:02:52 4 Pape relay what he had learned from Mr. Cook to you?

06:02:55 5 A. He did. Special Agent Pape later told me that at
06:02:58 6 the residence Mr. Alex Cook told him that he knew why we
06:03:03 7 were there and that he had child pornography on his
06:03:05 8 computer.

06:03:05 9 Q. And what role did that information from Mr. --
06:03:08 10 from Agent Pape, what role did that information play in
06:03:11 11 your evaluation of Mr. Douglas?

06:03:12 12 A. It changed my focus of the investigation to be
06:03:16 13 nearly completely on Mr. Cook.

06:03:20 14 Q. Had you found child pornography on Mr. Douglas'
06:03:22 15 computer, how would that have changed your
06:03:26 16 investigation?

06:03:28 17 A. Well, at that point if I found it on Ian Douglas'
06:03:32 18 computer, in addition to the information we knew about
06:03:36 19 Mr. Cook, I would have treated them both as subjects of
06:03:39 20 the investigation.

06:03:40 21 Q. Had you found child pornography on Mr. Douglas'
06:03:44 22 computer, would you have ignored Mr. Cook at that point?

06:03:47 23 A. No, I would not have.

06:03:50 24 Q. Subsequent to completing the search did you
06:03:53 25 receive any phone calls from Mr. Cook?

06:03:55 1 A. I did.

06:03:56 2 Q. Could you describe those phone calls?

06:04:00 3 MR. SECOR: May we approach the bench?

06:04:02 4 THE COURT: Sure.

06:04:03 5 (Whereupon the following discussion was had
06:07:05 6 at the bench outside the hearing of the jury:)

06:07:05 7 MR. CRAWFORD: I just want to proffer what
06:07:05 8 the phone calls are about. One of the phone calls --
06:07:05 9 well, the gist of the phone calls is he was calling
06:07:05 10 Agent Schulte to ask him the status of his case. He
06:07:05 11 called Agent Schulte; he wanted to get his X-Box back
06:07:06 12 because it belonged to Ian Douglas, and he also
06:07:06 13 requested on at least one occasion the name of the
06:07:06 14 U.S. -- Assistant U.S. Attorney who was handling this
06:07:06 15 case so he could call the U.S. Attorney and work
06:07:06 16 something out.

06:07:06 17 MS. KELLEY: Why are we doing this?

06:07:07 18 THE COURT: I'm not going to let him say
06:07:07 19 that.

06:07:07 20 MR. SECOR: That's why I wanted to come to
06:07:07 21 the bench.

06:07:07 22 THE COURT: An offer of settlement or
06:07:07 23 compromise, I don't think that's admissible. So that's
06:07:07 24 that part of the question.

06:07:07 25 MS. KELLEY: Then my objection would be

06:07:08 1 moot.

06:07:08 2 THE COURT: Okay. Why don't you ask the
06:07:08 3 agent -- and I'll say this calls for a yes or no
06:07:08 4 answer -- Agent, did Mr. Cook call you on one occasion
06:07:08 5 to ask you about -- whatever the first thing was.
06:07:08 6 And --

06:07:08 7 MS. KELLEY: The X-Box I think.

06:07:08 8 THE COURT: There were three things.

06:07:08 9 MR. CRAWFORD: Well, several things. One was
06:07:08 10 the status of his case, another was this X-Box, and then
06:07:08 11 he wanted the name of the U.S. Attorney.

06:07:08 12 THE COURT: I'm going to keep that out.

06:07:08 13 MR. CRAWFORD: Cut it off there?

06:07:08 14 THE COURT: My point is he called to ask
06:07:08 15 about the status of his case, and at another point did
06:07:09 16 he call about getting his X-Box back? I'll say just yes
06:07:09 17 or no so it can kind of guide the agent so he doesn't
06:07:09 18 say, Yes, and da-da-da. I think it's a little risky.

06:07:09 19 MR. CRAWFORD: Judge, I intended to ask him
06:07:10 20 why he called about the X-Box.

06:07:10 21 THE COURT: Why don't you say, He called to
06:07:10 22 ask about this and about that. Because I don't want him
06:07:10 23 to talk about contacting the U.S. Attorney. If you want
06:07:10 24 to ask him when were these calls made, on day one and
06:07:10 25 day two?

06:07:10 1 (End of side-bar discussion.)

06:07:10 2 THE COURT: You may rephrase the question.

06:07:10 3 BY MR. CRAWFORD:

06:07:10 4 Q. Special Agent Schulte, Mr. Cook made phone calls
06:07:15 5 to you after he'd been served the search warrant; is
06:07:18 6 that true?

06:07:18 7 A. That is true.

06:07:20 8 Q. And in one call he asked you the status of his
06:07:23 9 case; is that true?

06:07:24 10 A. That is true.

06:07:25 11 Q. And in another call he asked you about the return
06:07:28 12 of an X-Box; is that true?

06:07:30 13 A. It may have been the same call, or it could have
06:07:33 14 been a separate call. I don't recall how many times we
06:07:37 15 spoke. But yes, I do recall Mr. Cook inquiring about an
06:07:41 16 X-Box.

06:07:41 17 Q. During your career as a law enforcement officer,
06:07:44 18 have you ever sent a letter to a prosecutor telling him
06:07:47 19 not to go further with a case?

06:07:48 20 A. No.

06:07:49 21 Q. Have you ever sent a letter from a -- someone
06:07:53 22 under investigation to the prosecutor indicating the
06:07:56 23 prosecutor should not go forward with the case?

06:07:59 24 A. No.

06:07:59 25 Q. And you were present in the FBI Lima office

06:08:03 1 during the time Agent Pape was questioning Mr. Cook; is
06:08:07 2 that true?

06:08:07 3 A. Yes.

06:08:08 4 Q. And where -- where was your physical location to
06:08:12 5 the interrogation room?

06:08:13 6 A. I was just outside the interrogation room in the
06:08:17 7 general office area of the FBI, perhaps 20 feet from --

06:08:22 8 MS. KELLEY: Objection, Your Honor. This
06:08:23 9 was already covered during direct.

06:08:25 10 THE COURT: I think so.

06:08:27 11 MR. CRAWFORD: Okay, Your Honor. That's
06:08:28 12 fine.

06:08:28 13 THE COURT: I think so.

06:08:29 14 MR. CRAWFORD: All right. No further
06:08:31 15 questions, Judge.

06:08:31 16 THE COURT: Ms. Kelley.

06:08:33 17 MS. KELLEY: Very briefly. Thank you.

06:08:36 18 - - -

06:08:36 19 CRAIG SCHULTE, CROSS-EXAMINATION

06:08:36 20 BY MS. KELLEY:

06:08:36 21 Q. Under cross-examination during rebuttal testimony
06:08:42 22 Agent Pape testified that in certain circumstances law
06:08:48 23 enforcement is allowed to lie to subjects. Would he be
06:08:52 24 correct or incorrect?

06:08:54 25 A. I believe that to be correct.

06:08:57 1 Q. And the child pornography material was traced to
06:09:08 2 an IP address, correct?

06:09:10 3 A. That is correct.

06:09:11 4 Q. It was not traced to a MAC address, was it?

06:09:15 5 A. That's correct.

06:09:16 6 MS. KELLEY: Thank you. No more questions.

06:09:19 7 MR. CRAWFORD: No questions, Judge.

06:09:21 8 THE COURT: I just have one question --
06:09:24 9 forget it. That's okay. Never mind.

06:09:41 10 MR. CRAWFORD: Judge, that concludes our
06:09:43 11 rebuttal witnesses.

06:09:44 12 THE COURT: Pardon me?

06:09:45 13 MR. CRAWFORD: That concludes our rebuttal
06:09:47 14 witnesses.

06:09:48 15 THE COURT: Any surrebuttal?

06:09:49 16 MS. KELLEY: No, Your Honor.

06:09:51 17 THE COURT: Both parties rest. Okay.

06:09:53 18 Ladies and gentlemen, you've heard all the
06:09:54 19 evidence that you're going to hear to decide this case,
06:10:00 20 but keep an open mind. I mean, I can understand that
06:10:04 21 that's very difficult. It's human nature to start
06:10:09 22 weighing things and thinking about things along the way,
06:10:12 23 but as I explained to you at the outset of the trial,
06:10:17 24 that's why it's so important you ask do everything you
06:10:21 25 can to keep an open mind.

06:10:22 1 I certainly hope you followed my instruction
06:10:24 2 not to talk about the case yet. Again, when you go home
06:10:27 3 this evening, if they ask you what's going on and so
06:10:30 4 forth, you say, well, once the case is all over I can
06:10:34 5 talk to you as much as you want to or you may want me to
06:10:37 6 talk about, but until then I can't say anything. Let's
06:10:41 7 talk about how we go from August to November in
06:10:47 8 basically 24 hours around here or anything else, but not
06:10:50 9 about the case.

06:10:51 10 As I indicated, I'm going to adjourn now,
06:10:54 11 and we'll start tomorrow at 8:30 with my charge. There
06:10:58 12 are some changes in the charge from the one that I gave
06:11:02 13 you. They're primarily stylistic and reflect the fact
06:11:07 14 that you've heard the evidence rather than the
06:11:10 15 anticipation that you're about to hear the evidence.
06:11:13 16 But in sum and substance they are substantially the
06:11:17 17 same. But it is that charge which will guide your
06:11:19 18 deliberations. As I will probably mention tomorrow as
06:11:22 19 well, you'll each have your own copy. You can make
06:11:25 20 whatever notes on it you want. And you'll take those
06:11:31 21 back with you. However, I will write the final charge
06:11:35 22 on the one that I read from in case of any change or
06:11:38 23 whatever. If there's any question about the charge, it
06:11:41 24 will be that final charge that is to guide your
06:11:44 25 deliberations.

06:11:46 1 As I mentioned, I would expect that we will
06:11:49 2 have closing arguments done around 11:00. I don't keep
06:11:54 3 a stopwatch on the lawyers; they both have a lot to talk
06:11:58 4 about, of course. It's an important case. I'll give
06:12:01 5 them the time they think they need. So certainly I
06:12:04 6 think before noon the case will be in your hands for
06:12:09 7 deliberation. As I mentioned earlier, the timetable is
06:12:12 8 entirely yours to set. So thank you for your
06:12:14 9 attentiveness, patience for the occasion of delays and
06:12:19 10 sidebars. I should have mentioned that while we're
06:12:23 11 over here at sidebar don't ponder about what it is we're
06:12:27 12 talking about or what's going on. That's not evidence,
06:12:30 13 of course. The evidence is only what you heard from the
06:12:33 14 witness stand and the exhibits that you'll have with you
06:12:35 15 in the jury room.

06:12:36 16 So safe travels home and back, and we'll see
06:12:40 17 you tomorrow morning about 8:30. Thank you.

06:13:22 18 (The jury is excused.)

06:13:26 19 THE COURT: I'll have Amy get you the charge
06:13:28 20 by e-mail. One change I made, I've already discussed
06:13:33 21 with you, but I did place it elsewhere in the charge.
06:13:39 22 Let me just read it to you. I think it's really the
06:13:42 23 only one that there's any significant change. I
06:13:46 24 inserted my own closing charge about their duties and
06:13:56 25 selection of the foreperson, all of that.

06:14:00 1 The charge captioned "Statement by the
06:14:04 2 defendant" will read as follows, subject to further
06:14:07 3 objection and discussion, if any. If you do, the
06:14:15 4 objection's been preserved, the government's objection.
06:14:18 5 But in terms of phraseology or whatever, as to this or
06:14:22 6 anything else, send me an e-mail sometime this evening
06:14:26 7 and I'll -- actually, if you can look at it now and let
06:14:32 8 me now.

06:14:33 9 MS. KELLEY: Could you just read it quickly?

06:14:35 10 THE COURT: I meant the whole charge.

06:14:37 11 Statement by the defendant: You heard
06:14:38 12 testimony that the defendant on September 8, 2001, made
06:14:50 13 a statement in which the government -- the government
06:14:56 14 claims he acknowledged -- admitted certain facts. The
06:15:04 15 defendant disputes the government's version typed by
06:15:06 16 Agent Pape of the statement. It is for you to determine
06:15:10 17 what it was that defendant said to the agent and what
06:15:13 18 weight to give to what he told him. In determining what
06:15:17 19 the defendant told the agent, you should consider all of
06:15:20 20 the evidence about the statement including the
06:15:22 21 circumstances under which the defendant spoke to the
06:15:25 22 agent, and the agent in turn created his typewritten
06:15:30 23 version of the statement. In determining what the
06:15:33 24 defendant told the agent, you may also consider the
06:15:36 25 failure of the agent to have recorded the interview and

06:15:40 1 the oral statement made by the defendant to the agent.

06:15:45 2 I thought it would fit there.

06:15:46 3 MS. KELLEY: The only point is purely
06:15:48 4 technical. The statement was dated 9/15, not 9/8.

06:15:54 5 THE COURT: I don't know how that snuck in
06:15:57 6 there.

06:15:57 7 MS. KELLEY: Otherwise it's fine, Your
06:15:59 8 Honor.

06:15:59 9 MR. SECOR: Judge, in our original
06:16:02 10 submission of jury instructions I had a pattern
06:16:04 11 instruction of 7.20, statement by the defendant. Under
06:16:12 12 United States versus Adams, it's a required instruction.
06:16:16 13 It must be given.

06:16:19 14 MS. KELLEY: No objection.

06:16:23 15 THE COURT: Well, I'm not sure I can find
06:16:27 16 your -- can you bring that up to me? Did I take that
06:17:30 17 out? Corroboration; is that the part? That makes
06:17:34 18 sense. It seems superfluous to me, but I appreciate
06:17:46 19 your calling it to my attention.

06:17:51 20 Was that the only portion that -- I didn't
06:18:00 21 read that. I'm sorry.

06:18:02 22 Number four. You may convict the defendant
06:18:05 23 solely on his own -- you may not convict the
06:18:09 24 defendant -- that's the same language. I just hadn't
06:18:13 25 read further. Thank you.

06:18:19 1 I'm going to be very candid. Agent Schulte,
06:18:22 2 I know it's not your job to change policy. But as Mr.
06:18:26 3 Secor and Mr. Crawford probably told you, I am deeply
06:18:29 4 disturbed that the FBI continues its incomprehensible
06:18:39 5 policy of not recording interviews. We spent this week
06:18:46 6 for one reason and one reason only in this case, because
06:18:52 7 the Bureau does not record interviews. Shame on the
06:18:57 8 Bureau. It makes no sense. It gives the Bureau an
06:19:04 9 unfair advantage. You come in here in your coat and tie
06:19:08 10 and say, I'm from the FBI, and I do not lie, and
06:19:12 11 everybody believes it. You already come in with an
06:19:16 12 overwhelming advantage because of the Bureau you work
06:19:19 13 for and the esteem and respect in which we all hold it,
06:19:24 14 myself included. I've worked with your agents for more
06:19:27 15 than 30 years. And quite candidly, rarely, if ever,
06:19:31 16 have I had a question about their veracity. But it
06:19:38 17 enhances the advantage you already have and the
06:19:42 18 government already has not to record interviews. They
06:19:46 19 tape record -- they videotape them across the street,
06:19:50 20 across the mall in the Toledo Police Department. You
06:19:53 21 have an undercover operation; you wire the informant for
06:19:56 22 every single drug transaction. Why do you do it? Best
06:20:00 23 possible record. That's why. But you get in an
06:20:05 24 interrogation room with nobody else except a 20 year old
06:20:10 25 defendant, and you -- your Bureau sees fit at that

06:20:14 1 moment, the most crucial moment of any investigation,
06:20:19 2 not to record what he says and what you say; "you,"
06:20:24 3 collectively incorporated. And that's shameful. It's
06:20:29 4 intolerable in any society under any government that
06:20:33 5 values the rights of its citizens to a fair trial.

06:20:40 6 I know my saying this is out of role and
06:20:43 7 perhaps out of place. I know that there is nothing you
06:20:46 8 can do about it. But quite simply, somebody has to tell
06:20:50 9 the Bureau, there's at least one federal judge in whose
06:20:56 10 estimation the FBI diminishes when it comes in the
06:21:00 11 courtroom and it says, we didn't record the statement.
06:21:05 12 I was tempted to ask the simple question, What would
06:21:10 13 have been the indisputable proof of what was said in
06:21:14 14 that room? And you would have had to answer, a
06:21:21 15 recording. I was that close to doing it. But I decided
06:21:27 16 not to put my thumb on the scales. I'm not so sure next
06:21:32 17 time it happens I will be quite so discreet. This
06:21:35 18 young man is looking at 15 years in prison if he gets
06:21:39 19 convicted. If he did what he did, it's appalling. It's
06:21:46 20 insufferable. He deserves to go to prison. But he
06:21:52 21 also deserves the fairest possible trial our government
06:21:55 22 can give him. And every time the FBI does not show up
06:22:01 23 with a recording device, it cheats that suspect and
06:22:06 24 ultimately that defendant. It's not playing fair. I
06:22:11 25 expect more from our government law enforcement agents.

06:22:14 1 You send in an undercover agents, peephole cameras, you
06:22:20 2 wire rooms, you record by law every conversation that's
06:22:23 3 heard on a Title III. But it comes to the occasion when
06:22:30 4 most cases are determined, namely when you sit down in a
06:22:37 5 closed interview room with a suspect; that is the most
06:22:42 6 crucial moment of almost every case in an investigation,
06:22:47 7 the one-on-one interrogation, and you take advantage of
06:22:51 8 that by not recording it. Shame on the Bureau. And
06:22:55 9 tell them I said so. Tell them they can do better. We
06:22:58 10 deserve better. I've said enough. See you in the
06:23:04 11 morning.

06:27:39 12 (Recess taken.)

06:27:39 13 THE COURT: I'd like the U.S. Attorney to
06:27:46 14 have a transcript made. Agent, I know I'm yelling at
06:27:55 15 you. I'm yelling at you as the best available
06:27:58 16 representative. I know you have nothing to do with this
06:28:00 17 policy. On the other hand, I thought Ms. Kelley had a
06:28:03 18 good point. You're the case agent. You could have
06:28:06 19 asked the SAC. And I've got to believe that next time
06:28:10 20 any agent in the Western Division, Toledo, Lima, or
06:28:13 21 Sandusky asks for that permission, they're going to get
06:28:16 22 it. I'm telling you right now, I expect you to ask.
06:28:19 23 And if you don't, what I tell the jury the next time may
06:28:21 24 be a lot more pointed and a lot more unfair and may
06:28:24 25 result in somebody not getting convicted who deserves to

06:28:29 1 be convicted. But I will not tolerate the fundamental
06:28:33 2 unfairness of what the FBI does day in and day out,
06:28:38 3 trial in and trial out, interrogation and interrogation
06:28:44 4 and interrogation after another. It is unpardonable.
06:28:49 5 In this courtroom in front of this judge it is
06:28:51 6 unacceptable. And it will not happen again. Or if it
06:28:55 7 does, I will give a strongly worded instruction. I will
06:28:57 8 exercise my right to question the agent. And I will
06:29:01 9 also exercise my right to comment on the evidence.
06:29:07 10 Enough said. Let's get about the business.

06:29:11 11 MR. SECOR: Your Honor, the government would
06:29:12 12 offer Exhibits 21, 22, and 23. These were the
06:29:18 13 appendices to Mr. Vassel's report.

06:29:24 14 MS. KELLEY: No objection.

06:29:25 15 THE COURT: They'll be admitted.

06:29:28 16 MS. KELLEY: And we would ask that the Court
06:29:30 17 admit Defendant's Exhibit 116, which is the 302, date of
06:29:35 18 transcription 9/20/10 by Agent Schulte and Smith.

06:29:41 19 MR. SECOR: No objection.

06:29:43 20 MS. KELLEY: And then Defendant's Exhibit
06:29:44 21 117, another 302, date of transcription 9/20/2010 by
06:29:51 22 Agent Schulte and Pape.

06:29:54 23 MR. SECOR: No objection.

06:29:58 24 THE COURT: The one thing I did do, the
06:30:02 25 other stuff I changed, I should mention, to the

06:30:15 1 boilerplate about disregarding questions to which an
06:30:19 2 objection was sustained: If I sustained an objection or
06:30:23 3 if a question was withdrawn, you must disregard the
06:30:28 4 question and answer, if any, to the question. Do not
06:30:30 5 speculate about what an answer might have been where I
06:30:35 6 sustained an objection to a question.

06:30:38 7 MR. SECOR: Fine, no problem.

06:30:40 8 MS. KELLEY: That's fine, Your Honor.

06:30:43 9 THE COURT: I apologize for losing my
06:30:45 10 temper.

06:30:46 11 MR. SECOR: I'm used to it after 25 years.

06:30:52 12 THE COURT: No -- I hope I don't.

06:30:55 13 MR. SECOR: You don't remember how it used
06:30:56 14 to be 25 years ago.

06:30:58 15 THE COURT: Old timer's disease. I do want
06:31:02 16 to say it's a pleasure having you. I can't imagine
06:31:05 17 you've never tried a case to me.

06:31:07 18 MR. SECOR: A couple times a long time ago.

06:31:10 19 THE COURT: I assume so. But I don't --

06:31:12 20 MR. SECOR: A long time ago.

06:31:15 21 THE COURT: Ms. Kelley, you've done an
06:31:16 22 excellent job.

06:31:17 23 MS. KELLEY: Thank you.

06:31:18 24 THE COURT: And Gene and Tom, you have too.
06:31:20 25 It's been a pleasure. Perhaps not for you on occasion.

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(Adjourned at 3:12 p.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled
matter.

/s Tracy L. Spore_____

Tracy L. Spore, RMR, CRR

Date

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